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No. 81-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Mississippi

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

LLOYD N. CUTLER
JAMES ROBERTSON
WILLIAM R. RICHARDSON, JR.
DRAKE CUTINI
WILMER, CUTLER & PICKERING
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

THOMAS I. ATKINS
CHARLES E. CARTER
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1790 Broadway
New York, New York 10019
(202) 245-2100
Counsel for Petitioners

Of Counsel:
WILLIAM L. ROBINSON
FRANK R. PARKER
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 628-6700

July 31, 1981

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APPENDIX A

SUPREME COURT OF MISSISSIPPI

No. 51488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE *et al.*

v.

CLAIBORNE HARDWARE COMPANY *et al.*

Dec. 10, 1980

Rehearings Denied March 4, 1981

Before SMITH, P. J., and SUGG and COFER, JJ.

COFER, Justice, for the Court:

Beginning April 1, 1966, a boycott of retail merchants of Port Gibson and Claiborne County was in effect for some length of time. This suit, in the Chancery Court of the First Judicial District of Hinds County, resulted from the boycott. The suit, brought by Claiborne Hardware Company and twenty-three other complainants, retail merchants in Claiborne County, and filed October 31, 1969, named as defendants the National Association for the Advancement of Colored People (NAACP), Mississippi Action for Progress (MAP), a domestic nonprofit corporation and 146 individual defendants (individuals), (NAACP, and individuals, NAACP, et al.), these individual defendants largely making common cause with defendant NAACP in the suit. The bill of complaint charged defendants with conspiracy to injure and ruin the businesses of the several complainants by tortious involvement with complainants' rights to pursue their lawful trade and business through defendants' conspiracy,

boycott, interference, and restraint of trade. In their suit complainants alleged and charged:

1. The complainants charge that beginning on or about April 1, 1966, and continuing daily thereafter each, every and all of the defendants, corporate, and individual defendants, hereinbefore set forth, combined and entered into an agreement and conspiracy, with a unity of design and purpose and a preconceived plan, the malicious and unlawful object of which was to ruin and cause injury to the hereinbefore named businesses of the complainants and others; that said defendants did not enter into said conspiracy and combination for the purpose of protecting or advancing any legitimate interests of their own; and that said act constituted an unlawful conspiracy.

2. The complainants charge that the means employed by the defendants, and each of them in carrying out and to effect the purpose of the illegal and unlawful combination, plan, scheme, and conspiracy, was and is likewise malicious, illegal and unlawful; that the defendants have since April 1, 1966, daily engaged in and committed malicious, illegal and unlawful acts of injurious falsehoods, deception, force, intimidation, threats, coercion and violence against the customers and prospective customers of the complainants.

3. The complainants charge that in pursuance of the aforesaid conspiracy to injure the businesses of complainants and others, that the defendants and each of them executed and are continuing to carry out said malicious, illegal and unlawful plan and scheme to the great damage of complainants; and that said conspiracy on the part of all and each of said defendants was induced in malice toward the complainants and was and is without justification

or lawful purpose; and that its objects as aforesaid have been and are being accomplished by illegal means and in an unlawful manner.

4. The complainants charge that on or about April 1, 1966, and daily thereafter, the defendants and each of them entered into an unlawful combination among themselves and others who are unknown to complainant to illegally bring about a secondary boycott to the businesses of the complainants and others with the intent and purpose of causing loss to the complainants and others by coercing the customers and prospective customers, against their will, to withdraw and withhold their beneficial business intercourse from the complainants by the infliction of physical injury to said customers and prospective customers on their person and property; by the threat of physical injury; by intimidation so as to put said customers and prospective customers in fear of such injury; through the fear of incurring the displeasure persecution and vengeance of said combination; and by threats to said customers that unless they withdrew or withheld their beneficial business intercourse from the complainants and others against whom the conspiracy, combination and concert of action is directed, that said combination would cause injury to said customers in their person, property and business. Complainants further charge that by the use of threats, intimidation, and coercion, the said defendants intended to overcome and did overcome the will of the customers and prospective customers of the complainants, and by such unlawful and illegal means, intended to and did compel said customers to refrain from trading with the complainants. Complainants further charge that said defendants committed acts and spoke words to said customers and prospective customers of complainants that caused them to fear for their lives

> and safety; and that they were in such apprehension of damage that said customers were and are so influenced thereby as to prevent them from freely trading with complainants, as said customers so desire to do; and that the complainants assert that they at no time material hereto had any dispute, disagreement or controversy with any of the defendants herein or the combination thereof. Complainants further charge that the said illegal secondary boycott was and is an unlawful invasion of their property rights; that complainants have been caused to suffer great harm and damage as a result thereof; and that complainants, because of said malicious attempt to irreparably injure them and each of them, without purpose, by said secondary boycott, are entitled to recover damages jointly and severally from said defendants.

(These allegations were used as complainants' basis for charging interference and restraint of trade on defendants' part, also.)

After delay in the United States District Court and the Fifth Circuit Court of Appeals [*Henry v. First National Bank of Clarksdale*, 50 F.R.D. 251 (N.D.Miss. 1970), 444 F.2d 1300 (5th Cir. 1971), *cert. denied*, 405 U.S. 1019, 92 S.Ct. 1284, 31 L.Ed.2d 483 (1972), *rehearing denied*, 406 U.S. 963, 92 S.Ct. 2057, 32 L.Ed.2d 351 (1972)], trial was begun on June 11, 1973, on the Bill of Complaint and Cross Bills of some of the defendants. After testimony was taken over a long period of time, the chancellor rendered opinion August 9, 1976, which was followed by decree consistent therewith dated and filed on August 19, 1976.

The complainants had prayed for actual damages alleged to be in the amount of $3,542,466.04. The chancellor awarded aggregate money decree to them in the amount of $950,699 plus solicitor fees in the amount of

$300,000, a total recovery of $1,250,699. Chancery jurisdiction was availed of for use of the attachment in chancery statute [(Miss.Code Ann., § 11-31-1 (1972)] and for injunction. Injunction against use of guards at stores, persuading or otherwise procuring potential customers to withhold their patronage, and against individual activity by the defendants was ordered by the decree.

(Although the granting of injunction has been assigned as error, the error has not been argued, and NAACP, et al. say, at the conclusion of their brief ". . . the injunctive aspects of the case are now moot . . . .").

Appeal was taken therefrom to this Court. Defendants-appellants successfully invoked the aid of the federal court for relief against full compliance with our appeals supersedeas statute [*Henry v. First National Bank of Clarksdale*, 424 F.Supp. 633 (N.D.Miss.1976), *aff'd* 595 F.2d 291 (5th Cir. 1979)]. Appellants do not assign as error the chancellor's failure to award relief on their cross bills, nor is there a cross appeal by the complainants as to amount of the decree nor as to the court's dismissal of the cause as to certain of the defendants.

On appeal, twenty-eight errors are assigned, but appellants' arguments are made as to the following propositions:

1. The appeals for a boycott to protest racial discrimination were lawful communications protected by the First Amendment.

   A. The allegedly "secondary" character of the boycott is both irrelevant and unproven.

   B. The chancellor's conclusions regarding intimidation are unsupported by record and Constitutional limitations.

2. All of the three theories of liability adopted by the chancellor were erroneous.

A. Mississippi's anti-boycott statute cannot support the finding of liability.

1. The statute purports to forbid activity protected by the First Amendment and is therefore unconstitutional on its face.

2. Retroactive application of the anti-boycott statute was erroneous under state law and deprived appellants of due process of law.

B. Mississippi's trade restraint statutes do no apply to the Port Gibson boycott.

C. The common law of conspiracy to commit tortious interference with business does not support the finding of liability.

3. The chancellor erred in awarding damages without first separating out the amount of loss resulting from Constitutionally protected activity.

4. The award of damages was speculative and improper in many respects.

A. The chancellor erred in awarding damages for goodwill.

B. The chancellor erroneously depended upon indirect evidence of lost profits where more reliable evidence was available.

C. In obvious ways, the appellees' theories for calculating lost profits were improper and yield only speculative results.

D. The chancellor erred in failing to correct for appellees' mitigation of their losses.

E. The chancellor erred in awarding damages representing prejudgment interest on lost earnings.

5. The award of attorneys' fees was error because the anti-boycott statute was inapplicable and for other reasons.

A. It was error to include in the award attorneys' fees incurred in federal litigation.

B. The record contains no evidence and the chancellor made no findings to permit appellate review of the attorneys' fee award.

6. The chancellor abused his discretion in denying appellants' motion for a change of venue.

On liability, we affirm the Chancellor's decision as to some defendants, and reverse it as to others, as hereinafter indicated. We reverse as to damages and remand the case to the lower court for trial on the issue of damages only.

(MAP has filed its own assignment of errors and separate brief, all of which will be noticed later in this opinion.)

Reaching early appellants' Point VI, attacking the Chancery Court's failure to grant appellants' request for a change of venue to Claiborne County, we find no error in the retention of the case in the Chancery Court of the First Judicial District of Hinds County.

The suit might properly have been brought "in the Chancery Court of any county where the defendant, or any necessary party defendant, may reside or be found." Mississippi Code Annotated, Section 11-5-1 (1972). The suit was for injunction and recovery of damages against multiple defendants largely resident of Claiborne County. However, at least three defendants, including NAACP and MAP "resided" in the First Judicial District of Hinds County.

Appellants, in support of this assignment of error have cited *Gillard v. Great Southern Mortgage & Loan Corp.*, 354 So.2d 794 (Miss. 1978), and *Illinois Central Gulf RR v. Stedman, Admrx.*, 344 So.2d 468 (Miss. 1977). The *Gillard* case involved no resident of the county wherein the suit was brought. The *Stedman* case was brought in a county permissible for venue purposes by Section 11-5-1, but far from the county of the accident claiming the life of Mrs. Stedman's deceased. This Court did not hold it to be error not to grant a change of venue on that account, but pointed out that, on retrial, the reversal being on faulty instruction, the circuit court should again consider the motion for change of venue under the doctrine of *forum non conveniens.*

The granting of the motion was addressed to the sound discretion of the court, and, in order to assert error in refusing the change, it is necessary for the movant to show prejudice to him in the refusal, such prejudice not appearing here. *Gillard*, supra; *Mississippi State Highway Comm. v. Rogers*, 240 Miss. 529, 128 So.2d 353 (1961); *Stokes v. State*, 240 Miss. 453, 128 So.2d 341 (1961).

No reversible error was committed in the court's denial of the requested change of venue.

Black people number more than three-fourths of the population of Claiborne County. With the momentous weight of civil rights progress augmented in great measure by federal civil rights laws and led by dedicated activists, by the time the boycott here involved had begun the blacks had obtained overpowering authority in the ballot box. In the elections which took place in 1967 they from their number elected the chancery clerk, and might easily have put members of their ranks in practically all of the county's elective offices.

Late in 1965, a group of their numbers, whether spontaneously or by authority of some group is not clear,

had put together certain complaints and areas of relief which concerned them. About the same time, the NAACP movement had taken hold in Claiborne County which movement resulted in the organization of a chapter whose power and desires were being expressed. The late 1965 points of relief and the exponents of them were silenced or otherwise replaced by a group which had the leadership of Charles Evers, Field Secretary for the NAACP. In two missives they delineated and articulated to the addressees thereof their immediate concerns.

The first of the communications, dated March 14, 1966, was addressed to the mayor and board of aldermen (obviously of the City of Port Gibson), the Claiborne County Board of Supervisors, the Board of Education and Sheriff McKay (both obviously of Claiborne County). The needs therein expressed were prefaced by a frank consideration of what may be correctly regarded as an alternative or an option probably facing those who had the power to satisfy those needs:

> We hope it will not be necessary to resort to the kind of peaceful demonstrations and selective buying campaigns which have had to be used in other communities. It takes manpower, time and energy which could be better directed at solving these problems which exist in Port Gibson and Claiborne County by mutual cooperation and efforts at tolerant understanding.
>
> No one likes to have to resort to picketing and other kinds of demonstrations . . . Just as no one likes to be the target of this kind of demonstration. But this sort of thing is inevitable unless there can be real progress toward giving all citizens their equal rights. There seems to be no other alternative.

There followed twenty-one needs (less two left blank therein, Numbers 4 and 5), as follows:

1. A community affairs committee, made up of both races, needs to be officially constituted by the Mayor and Board of Aldermen, the Board of Supervisors and the undersigned, so that future problems may be anticipated and solved before they reach a breaking point.

2. All public schools of Claiborne County and Port Gibson should be desegregated, both faculty, staff and student body this coming September, 1966.

3. Three Negro policemen should be employed in Port Gibson so that there will be impartial enforcement of the laws. The Negro policemen should be assigned to work with the white policemen on an integrated basis, with power to arrest any lawbreaker.

4. (Omitted)

5. (Omitted)

6. Negroes should be employed in the welfare office so that the County may demonstrate its good faith and impartiality.

7. All business houses in the county should comply with the spirit and letter of the Civil Rights Act of 1964 by treating all customers alike and according them the use of all facilities.

8. Verbal or physical abuse of citizens by law enforcement officers must cease and Negroes are not to be addressed by terms as "boy," "girl," "shine," "uncle," or any other offensive term, but as "Mr.," "Mrs.," or "Miss," as is the case with other citizens.

9. Crossing guards are to be posted at all schools, not just the white schools.

10. All funerals shall be accorded police escort.

11. Negroes should be named to the Board of Education. And they should be Negroes satisfactory to Negro leadership.

12. Public improvements should [sic] as roads, street, lights and sewer system are most needed in predominately Negro residential areas now because of past neglect. A program for remedying this situation should be embarked on immediately.

13. The Mayor, Board of Aldermen, County officials, businessmen and church leaders should denounce all extreme groups.

14. The courtroom and all other public facilities are to be desegregated immediately by order of the proper officials. This applies to all educational, recreational and other public-owned facilities.

15. Immediate steps must be taken to insure the selection of Negroes for jury duty in as close a relationship to the population breakdown as possible.

16 Provision must be made for the use of Negroes as election officials and for all other public duties.

17. Official and semi-official boards and commissions, now and in the future, must include appropriate numbers of Negro citizens.

18. The immediate desegregation of the Claiborne County Hospital, staff, and patients.

19. Bus stations must be integrated so that Negroes may be able to use all facilities.

20. All snack bars should be removed from classrooms.

21. Salesmen should be barred from entering classrooms interrupting classes.

The letter closed with the request, "Please communicate with the undersigned so that we may arrange a

meeting to discuss the details of solutions to these problems." It was signed by Calvin C. Williams, Chairman, Alexander Collins, Secretary, and James N. Dorsey, Floyd D. Rollins, Nathaniel H. Jones, Walter L. Griffin, Sr., and Mack Tisdale.

On March 23, 1966, a letter was addressed to all addressees of the March 14, 1966, letter, and to the Chamber of Commerce. It conveyed to its addressees the needs 4 and 5, omitted in the March 14, 1966, letter, expressed as follows:

> 4. All stores must employ Negro clerks and cashiers.
>
> A. Two or more deputy sheriffs must be hired.
>
> B. The city limits be extended to include Thompson Sub Division and all other areas where there is a concentrated group of citizens of Port Gibson.
>
> C. A strong housing code should be adopted and enforced.
>
> D. The teacher's lounge should be restored for teachers use rather than a centralize area for selling.
>
> 5. That a Negro County Agent be employed, since there is more than 8,239 Negroes in Claiborne County.
>
> A. That a full time home demonstration agent be employed to assist the farm women and young ladies to become effective Homemakers, including, planning, feeding, and caring for the farm families.

It ended with the statement, "We shall be awaiting your answer by April 1, 1966."

In addition to the signatories to the earlier letter it was signed by Charles Evers.

This group and these objectives appear from the record to have been duly appointed and to have been arrived at and adopted by the NAACP in regular meeting.

Satisfactory response was not made during the interval prior to April 1, 1966, and, led by Evers, the boycott was begun on April 1, 1966, with a march along the white business area of Port Gibson and with a speech by Mr. Evers on the undertaking being launched. Upward of a hundred witnesses were put on the stand during the trial (most of them defendants called adversely by the complaints), and testified, and as to be expected in such case, varying accounts of the boycott were discussed from which the conclusion is overwhelmingly warranted that it was conducted in serious fashion with planning, and expertise in control.

The NAACP met about weekly at First Baptist Church of which the Reverend Dorsey, one of the signatories of the March 14, 1966, and March 23, 1966, letters noticed above, was pastor. There were the marches and the pep speeches usually a part of such undertaking. There were the pickets with their signs; the group of men almost fifty in number who were specially conspicuous because they wore black headwear and perhaps other black clothing, so that they would be easily distinguishable. There were the "Black Times" publications, enshrouded by very little mystery as to editorship, etc., wherein the names of those being boycotted periodically appeared as well as names of some observed breaking the boycott. *Eastern States Retail Lbr. Dealers v. United States*, 234 U.S. 600, 34 S.Ct. 951, 58 L.Ed. 1490 (1913). There came into being the successful black store, "Our Mart."

The picket signs, among other messages, gave information that the boycott was that of the NAACP. Many of the picketing personnel were young children.

Regrettable and lamentable events which took place during the boycott, including the following: Dr. Martin Luther King, Jr. was assassinated on April 4, 1968, at Memphis under circumstances of common knowledge. On April 18, 1969, one Roosevelt Jackson was accused of interfering with law enforcement officers of Port Gibson in their effort to make an arrest of another. Later in that day policemen, one black and the other white, went to arrest him on the charge and a struggle resulted, details of which are clouded, ending in the fatal shooting of Jackson. At Dr. King's slaying there arose generally an attitude of frustration among the blacks for whom he had worked and lived. This sense of loss is shown to have intensified the Claiborne County boycott as it also gained expression in incidents of significance. (It should be said here that there is evidence also in the record from which it might be concluded that the unfortunate event caused not even a ripple in the blacks' undertaking.) The Jackson occurrence caused the boycotting blacks to become highly incensed resulting in their demand that the policemen involved be instantly discharged and even in their requirement that the entire police force be removed. Black activity took place at Jackson's home, at the hospital to which he was taken in an act of futility, at the Courthouse, and at First Baptist Church. Members of the Mississippi State Highway Patrol were sent in to help control the situation. There was weapons' firing, by whom is not clearly detailed in the record. Physical searches netted nothing in the way of weapons, but a search of a musical instrument in the church uncovered a number of weapons. The boycott which had reduced itself to some extent by the time of Jackson's death was then intensified and the entire Claiborne County's group of white merchants were brought within its prohibitions.

The group of men above noticed came into organized being about a month after the boycott was begun. They

were variously called "Black Hats," "watchers," "guards," "enforcers," "Deacons," or "Deacons for Defense." Their assignment, or their reasons for existence, was described as for the purpose of seeing to it that blacks who would trade with the boycotted white merchants were made aware of the boycott and that their cooperation was desired, and for the blacks' protection. There is testimony that these "watchers" organized themselves into a quasi-military group, drilled, bought weapons and ammunition, had target practice, two-way radios (automobile and "walkie-talkie" types), and they were sufficiently shown to have stood at corners or walked assigned areas, and stopping and interviewing would-be customers entering stores, within the area of the "watchers'" assigned patrols.

The chancellor rendered an able, detailed, analyzing opinion, fully covering the voluminous testimony. His portrayal, well supported in the record, presents a facet of the enforcement of the boycott:

> The thread of fear and violence is woven throughout this case. Sheriff McKay testified that many times black people who wanted to trade with whites appealed to him for protection. He said at least 100 blacks complained to him that they had been interfered with when attempting to trade with white merchants. He said that when the "store watchers" relaxed the boycott would "loosen up," particularly on the outskirts of Port Gibson and in Hermanville and Pattison.
>
> Very shortly after the boycott started, Sheriff McKay was near Hudson's Store when he noticed a group of black people gathered around a car parked in front of the store. McKay approached the crowd and said he heard the defendant Calvin Williams tell a black man named Darden that he (Darden) could not go into the store because it was

under boycott. McKay intervened, whereupon, he said, he heard Calvin Williams say to Darden: "You can go in, but the sheriff here isn't going to sleep with you at night." Darden did not go into the white store.

The atmosphere of fear that prevailed among blacks from 1966 until 1970 is strikingly revealed in the testimony of many of the witnesses.

James Gilmore, a black man, ignored the boycott. On the night of August 22, 1966, Gilmore's home was shot into. Elmo Scott, Jr., a member of the NAACP and of the "Deacons", together with two other young black men, Calvin Bailey and James Whitney, were arrested for this act and were convicted. The Mississippi Supreme Court reversed and remanded the case,[1] because of exclusion of Negroes from the grand jury. On retrial the jury was unable to agree. At the time of the trial, these people had not been retried.

Defendant Rudolph J. (Rudy) Shields, formerly of Chicago, was the principal figure in several altercations. He boasted that he was the "most jailed person in the Claiborne County boycott." This man was the acknowledged leader of the "Deacons."

Laura Cullens testified that she lived about a quarter-mile from the city limits of Port Gibson on Highway 18. She refused to join the NAACP, and she ignored the boycott. Her name, among many others, was called out at the NAACP meetings, and she was derisively referred to as an "uncle Tom." She was vilified and abused. In November 1966 shotgun pellets were fired into her home.

Muriel Cullens, a son of Laura Cullens, did not observe the boycott and was the target of harassment

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[1] *Whitney v. State*, 205 So.2d 284 (Miss. 1967).

by blacks. Cullens' car was run into and badly damaged, and a brick was thrown through the windshield.

In April 1966 soon after the boycott was started, Johnny Cox, a black man, and his wife were stopped by "store watchers" who attempted to prevent Mrs. Cox from going into the O. K. Cleaners, a white-owned business, to get some clothing. They had to get police protection in order to go into this cleaning establishment. About a week later, shotgun blasts were fired into the Cox home near Hermanville. Pistol shots were fired at Cox.

James Bailey, a 200-pound ex-football player, testified regarding his activities as a "store watcher." He was instructed to stop any black person he saw about to enter a white business house. He said that he had been a "bad boy" and had been convicted for molesting a child, resulting in sentence to the State Penitentiary. He was instructed to take the name of any black person going into a white-owned business and report same to defendant Pete Gusta. On one occasion, he stopped Willie Butler, an elderly black female whom Bailey referred to as "Nig" Butler, as she was going into the Piggly-Wiggly Store. Despite his warnings, she went into the store and purchased some items of groceries. He watched her house and saw groceries delivered there by a white-owned store. He instructed her to stop trading with whites, whereupon she told him she would trade with whom she pleased. Bailey went into this elderly woman's yard and destroyed her flower garden by way of punishing her.

There is evidence in the record that an elderly black man called "Preacher" White (Deceased at the time of trial) was stripped of his clothing and

whipped by a group of young blacks because he refused to honor the boycott.

Eddie Lewis, a black man, refused to join the NAACP and refused to honor the boycott. He was warned by Rudolph Shields to stay out of white-owned stores. Lewis purchased a bottle of whiskey at a white-owned liquor store, and was observed by Alfred Lee "Fats" Davis, a NAACP member and activist in the black boycott. Davis took the whiskey away from Lewis and denounced him in highly-uncomplimentary language for dealing with white people.

Willie Myles testified that he refused to stop trading with white stores. His name was read out at NAACP meetings as a "boycott breaker." He said he received threatening telephone calls. On one occasion, the Port Gibson police had to give him an escort when a carload of young blacks began following him. He received a warning that he was going to be whipped for buying gasoline at a white-owned service station.

Jasper Coleman, a black man, testified that he did not join the NAACP and continued to trade with white merchants after being warned by Walter Griffin and Calvin Bailey. The tires on Coleman's automobile were slashed.

Emerson Davis, a black commercial fisherman, testified that he refused to join the boycott. He testified that Rudolph Shields, Jimmy Ellis and three other blacks grabbed him, carried him down a street and beat him. He was denounced as an "uncle Tom." He said that he received threats on his life. James Bailey told him that he was going to kill him (Davis).

Unquestionably, the word "got around" in Port Gibson and Claiborne County that physical harm, as well as vilification and ostracism, could very well be the lot of any black person observed trading with whites. As a matter of fact, these things were promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that the black people believed him. This NAACP-sponsored boycott was a definite success insofar as economic damage to the white merchants was concerned, even though the victims—the white merchants—had no power to grant the demands made on the county and municipal authorities.

The testimony revealed that the defendant NAACP provided attorneys to defend black persons arrested and charged with violating the laws of Mississippi in connection with acts arising from the boycott; and this nonresident corporation posted bail bonds and on occasion paid fines of black persons convicted of criminal charges.

[It should be here noted that Evers promised, in what appears to have been a nationwide televised speech, that "if we catch you going in any of them racists white stores, we're gonna break your . . . neck."]

Mrs. Leesco Guster, one of the appellants, testifying as to Preacher White's alleged experience as a boycott breaker, said, "It was just talk, and I can't recall where it came from, because when talk starts in a small town, it goes everywhere."

Testimony by some of the appellant MAP's witnesses tended to show fright on the part of the cooks in the kitchens of Head Start, a service supplied by MAP, causing them to refrain from handling groceries from white grocers. Attorneys for appellees put into the record that they "will stipulate that all of the Head Start

MAP employees in Claiborne County were afraid to do business with white merchants."

The chancellor found, as he was bound to do from the record, that:

> In carrying out the agreement and design, of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results. Most effective, also, was the stationing of guards ("enforcers," "deacons," or "black hats") in the vicinity of white-owned businesses. *Unquestionably, the evidence shows that the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants.* (Emphasis added).

In *Southern Bus Lines, Inc. v. Amalgamated Association of Street, Electric Railway and Motor Coach Employees*, 205 Miss. 354, 38 So.2d 765 (1949), a decision involving a labor strike attended by violence against which, in part, an injunction was being sought by appellant, this Court said in quoting from *Milk Wagon Drivers Union of Chicago, Local No. 753 v. Meadowmoor Dairies*, 312 U.S. 287, 295, 61 S.Ct. 552, 555, 556, 85 L.Ed. 836, 842 (1941):

> . . . Judges need not be so innocent of the actualities of such an industrial conflict as to find in the Constitution, state or federal, a denial of the right of Mississippi to conclude that the use of force was not the conduct of a few irresponsible outsiders. The Fourteenth Amendment still leaves the state ample

discretion in dealing with manifestations of force in the settlement of industrial conflicts.

(205 Miss. at 361, 362, 38 So.2d at 770).

It appears from the demand letters noticed hereinabove that some of the areas for remedial action were within the power of the boycotted, and that others of them were public in their nature within the purview of the Port Gibson officials, the Claiborne County officials, and the Chancery Court. As to these public complaints, the merchants could only use the power of their influence to whatever degree such influence reached. The blacks expected the application of that influence and pressed into operation the boycott of the white merchants with that goal in mind. On April 18, 1969, when Jackson was killed, as noted above, at the hands of two policemen, one black and the other white, there was demand articulated that these officers be discharged, and the boycott was intensified and made again applicable countywide. Ira Thomas testified that, "the white merchants didn't have anything to do with Jackson's death—but you've got to hurt who you can . . . ."

There was extended testimony relative to the demands for the employment of black citizens at responsible jobs, and witnesses expressed the view that these demands should be met even if either it meant the discharge of white employees already on these jobs or that there would be two employees doing the job requiring only one employee to do, demands for reverse racial discrimination, as found to be true in *Hughes v. Superior Court of California*, 339 U.S. 460, 70 S.Ct. 718, 94 L.Ed. 985 (1950).

Appellees rely in part on Mississippi Code Annotated, section 97-23-85 (1972), which was adopted by the 1968 session of the Legislature and became effective July 30, 1968. Its constitutionality is vigorously attacked by appellants who assert that it is contrary to the right of

free speech guaranteed by the First Amendment to the United States Constitution.

The boycott began April 1, 1966. Section 97-23-85 was adopted in the 1968 legislative session, and went into effect July 30, 1968, when the boycott had been in operation for upward of two years. The statute clearly reflects no retrospective force, but only prospective. *Mladinich v. Kohn*, 186 So.2d 481 (Miss. 1966), and the many decisions therein contained. We are of the opinion that the statute is not applicable to the present decision.

Appellees likewise, in part, rely upon our restraint of trade statute, section 75-21-1, *et seq.*, and argue that the activity complained of operated to restrain their trade and their right to trade. The United States Supreme Court has seen fit to hold boycotts to achieve political ends are not a violation of the Sherman Act, 15 U.S.C. § 1 (1970), after which our statute is patterned. We, in turn, have been influenced by the decisions of that Court in interpreting and applying it. While economic goals were sought by appellants and while economic good was challenged and endangered in and caused to suffer by, the boycott, we find that the present decision may be made without application of the restraint of trade statute. *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965); *Eastern Railroad Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961). See also, *State of Missouri v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir. 1980), appeal for cert. filed, 49 U.S.L.W. 3005 (June 25, 1980), No. 79-2039; and *Machesky v. Bizzell*, 414 F.2d 283 (5th Cir. 1969).

The bill of complaint relies in part upon the common law protections which had formed the base for this Court's decisions in *Southern Christian Leadership Conf. v. A. G. Corp.*, 241 So.2d 619 (Miss. 1970), and *Southern Bus Lines, Inc., supra.* We regard that law as determinative here.

Judge (now Chief Judge) Coleman of the Fifth Circuit Court of Appeals clearly stated in *Smith v. Grady*, 411 F.2d 181, 187 (5th Cir. 1969), that: "Any kind of boycott is unlawful if executed with force or violence or threats . . . ." If any of these factors—force, violence, or threats—is present, then the boycott is illegal regardless of whether it is primary, secondary, economical, political, social or other. All of these factors are here present, and the boycott was illegally operated and we do not need to examine into its type, whether primary or other.

The presence of a conspiracy is beyond peradventure. *Southern Christian Leadership Conf., supra; Wagley v. Colonial Baking Co.*, 208 Miss. 815, 45 So.2d 717 (1950); *New York Mailers Unions v. National Labor Relations Board*, 316 F.2d 371 (D.C.Cir. 1963).

An examination of our statute, section 97-1-1, and our decisions in *Southern Christian Leadership Conf., supra; Mississippi Power & Light Co. v. Town of Coldwater*, 234 Miss. 615, 106 So.2d 375 (1958); and *Southern Bus Lines, Inc., supra*, will reveal the fact that a conspiracy to be a conspiracy, must be tainted with illegality, there must be an agreement to accomplish an illegal objective, or an agreement to accomplish a legal objective by the use of illegal means. The agreed use of illegal force, violence, and threats against the peace to achieve a goal makes the present state of facts a conspiracy. We know of no instance, and our attention has been drawn to no decision, wherein it has been adjudicated that free speech guaranteed by the First Amendment includes in its protection the right to commit crime.

The *SLC* opinion, *supra*, brought under unfavorable study the matter of boycotts without advance warning as to grievances held against the boycott victim, the same as here exists.

Mississippi Code Annotated, section 97-23-83 (1972), adopted and effective from February 9, 1966, a date antedating the beginning of the boycott, makes it a criminal offense to threaten with bodily harm, intimidate, or coerce a person to prevent the offended person from doing business with another. This statute was applied in *Shields v. State*, 203 So.2d 78 (Miss. 1967). Shields was one of those activists helping in the boycott, and was convicted of violating this statute. His case was reversed, however, because of deficiency in the jury list from which the convicting jury had been drawn.

That statute declares it to be a misdemeanor and punishable:

> If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading, or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than one thousand dollars ($1,000.00), or both.

That statute applied to, and was violated in, the coercion, intimidation, and threats which were a part of the boycott activity and contributed to its almost complete success.

The present case, in the relief sought and granted, the conduct of the boycott, and the applicable law, is so strikingly similar to this Court's decision in *Southern Christian Leadership Conference, supra*, that that decision and the law therein held to be applicable are compelling here, and by it we are impelled to find that liability for damages attached to NAACP and, subject to some exceptions hereinafter noticed, to the individual defendants.

MAP, as earlier herein noticed, filed its own assignments of error incorporating those of NAACP, et al. It also assigned as error the holding that MAP was a part of the conspiracy to boycott illegally, and the chancellor's rejection of its defense of duress, and further assigned as error the failure of appellees to furnish bill of particulars and the Court's finding that it was subject to suit and damages award in the absence of consent by the United States Government.

MAP is a creature of Mississippi statute as a nonprofit corporation. Mississippi Code Annotated, section 79-11-1, *et seq.* (1972). It was incorporated on September 13, 1966, for implementation of the government's Head Start program, 42 U.S.C. § 2928, *et seq.*, its participation therein being the provision of food, educational and other services to needy children in twenty counties of the state of which Claiborne County is one. The program is aimed specially at pre-school children of low-income families. It began operation in Claiborne County on January 16, 1967, with the intention to buy groceries from black and white stores, which groceries would be needed for meals for the children being benefited by the program. This plan was immediately foundered by the boycott, causing inquiries, investigations, conferences, and planning within MAP and between MAP and boycott leaders and others. A program arrived at to buy from four black groceries and four white groceries was immediately abandoned because the Head Start cooks were afraid to do business with the white merchants (this fact established in the record by stipulation of counsel for appellees), and Evers threatened to banish the program from the county rather than to permit the expenditure of government money with white merchants contrary to the very boycott itself. Finally, MAP adopted formally a course of action which required the purchase of all groceries from black stores, and, if these could not meet the MAP needs, then purchases would be made outside the county.

MAP sought and obtained an opinion or opinions from its attorneys, upon which it issued non-participation guidelines in political matters.

The record does not warrant a finding that MAP conspired with any of the co-conspirators, nor that it acted as a principal or as a willing participant in the boycott program. Rather, in our view, it operated as it did through fear on the part of its cooks (all black) for their safety, and to avoid the destruction or great impairment of its beneficial program in the county. We are of the view that the able chancellor erred in including it as a judgment defendant, and, as to it, the decree will be reversed and judgment will be rendered here for MAP.

An adequate search of the record reveals to our satisfaction, also, that for insufficient proof, lack of proof, or otherwise, appellees did not establish their case against certain of the defendants, and that including them among those against whom money decree and injunction were awarded was erroneous. As to them, the cause will be reversed and judgment will be rendered here for them. These are: Priscilla Brooks, Mack Louis Davis, Ethel Graise, Charlie Harris, Albert Jackson, Bessie Newman, D. A. Newman, Henry Otis Preston, Roman Shorter, Leon Tarleton, Alex Dorsey, Ella Dorsey, Bobby Kelly, Beatrice Atlas, Lela Jones, Viola Robinson, Dora Shorter, Rosa Shorter, Annie B. Smith, Alonzo Warner, Bonnie Wells, Eli Brooks, Maggie Clark, Mary Durham, John Eggleston, John Ellis, Rachel Ellis, Mrs. E. J. Jennings, Clarence Lucas, Early Wren, Roosevelt Owens, Delores Smith, Lessie Mae Walls, Ethel Warner, Gussie Pearl Wilson, Willie Wilson, and Ruby Wren.

We next consider the amount of damages awarded by the chancellor to 12 complainants as detailed in the following schedule:

	Loss of Earnings From Business 1966-1972	Loss of Interest on Earnings 1966-1972	Loss of Goodwill as of 12/31/72	Penalties	TOTAL
Claiborne Hardware Company, Inc.	$ 10,874	$ 3,313	$ -0-	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a McDaniel Pharmacy	117,653	21,438	26,460	500	166,051
James E. & George Hudson, d/b/a Hudson Brothers' Piggley Wiggly Store	174,315	40,882	-0-	500	215,697
Joe Ellis, Mrs. Ben Mullen, & Miss Ella Mae Ellis, d/b/a George Ellis Food Store	27,101	7,040	-0-	500	34,641
Waddy and Rosalie Abraham, d/b/a Jitney Jungle	70,351	12,213	59,153	500	142,217
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	52,447	4,236	96,633	500	153,816
W. H. Hay, d/b/a OK Cleaners & Shirt Laundry	47,889	7,951	26,740	500	83,080
Murad & Mildred Nasif, d/b/a M&M Superstore and Washateria	75,463	16,950	-0-	500	92,913
Port Gibson Lumber & Supply Co., Inc.	2,500	850	-0-	500	3,850
Charles R. Dobbs, d/b/a Western Auto Associate Store	13,994	2,859	-0-	500	17,353
Allen Motor Co., Inc.	2,468	839	-0-	500	3,807
Mrs. Egard A. McCaa, d/b/a Town & Country	11,302	2,458	8,327	500	22,587
	$606,357	$121,029	$217,313	$6,000	$950,699

In addition, the chancellor allowed complainants $300,000 attorneys' fees under section 93-23-85, Mississippi Code Annotated (1972). The award of attorneys' fees was improper because the statute has no retroactive effect as stated earlier in this opinion.

We also hold that the chancellor was in error in allowing a penalty of $500 to each of the 12 complainants under section 75-21-9, Mississippi Code Annotated (1972), because our restraint of trade statute, section 75-21-1, *et seq.*, Mississippi Code Annotated (1972), has no application to boycotts to achieve political goals.

The chancellor also allowed $121,029 for loss of interest on earnings from 1966 to 1972. Reduced to its essential elements, this is simply an allowance for pre-judgment interest and is not permitted under our decisions. In cases involving unliquidated claims for damages, interest can be allowed only from the time of judgment. *Alton v. Wood*, 300 So.2d 786 (Miss.1974); *McDaniel Bros. Construction Co. v. Jordy*, 195 So.2d 922 (Miss.1967).

The chancellor allowed the 12 complainants $606,357 for loss of earnings from business for the years 1966 to 1972 in the exact dollar amount set forth in Exhibit C-63 entitled, "Special Report Determination of Losses of 12 Business Establishments of Port Gibson, Mississippi, for the years 1966-1972 inclusive." The report was prepared by a firm of CPA's who calculated lost earnings upon the projection by Dr. Paul T. Oliver of the sales lost during the period. Complainants' claim for damages must stand or fall on the accuracy of Dr. Oliver's projection of sales, the underlying data upon which the projection was based, and the application by the accountants to each of the individual businesses.

Dr. Oliver, an associate professor of Economics at the University of Mississippi, testified as an expert and explained the graphs and computations made by him. Dr. Oliver made graphs of sales for the years 1960-65 and projected the sales for each business for the years 1966-72. The graphs depicted a trend line for sales which included an inflation factor of 3.2%. The difference between actual sales and the trend line sales represent his

conclusions as to the dollar amount of lost sales for the years 1966-72. The accounting firm of Chapman, Redditt and Grantham then converted lost sales into lost earnings. The accountants explained the basis for converting lost sales into earnings as follows:

BASIS FOR CONVERTING LOST SALES INTO LOST EARNINGS

The percentage of net earnings to gross sales was computed for the six year period 1960-65 and averaged in order to determine the means of converting lost sales into lost earnings for 1966 and the years thereafter.

This percentage represents the average earnings which resulted from sales during a span of normal years without the influence of extraordinary events. The six year period (assuming the business was operating in the six prior years) gives a broad base for an accurate measurement of earnings. Accepted accounting procedures normally call for at least a five-year base in measuring business performance for other purposes.

METHOD OF COMPUTING LOST EARNINGS RESULTING FROM LOST SALES

In computing lost earnings resulting from lost sales, the following major assumptions were made:

(1) Each business should be viewed as a "going concern" which would have continued in business until the present (12/31/72) without a boycott.

(2) Lost sales as computed by Dr. Oliver are the basis for computing lost earnings.

(3) If recovery of sales is made above the trend line in any of the years subsequent to the initial period of loss, total recovery is assumed to have

been made. Therefore, any losses of sales subsequent to such recovery are not used in determining lost earnings.

In computing lost earnings resulting from lost sales, the accountants added the gross sales for the base period, 1960-65, and divided this into the total net earnings for the base period resulting in a percentage representing net earnings. The projected sales with inflation were multiplied by the percentage of net earnings for the base period, the result being projected earnings. Actual earnings for each year, where applicable, were deducted from the projected earnings leaving the earnings lost. This method did not take into consideration any change in the pricing structure or mark-up of goods for sale. We note that gross profit, which is sales less cost of goods sold, decreased in some of the businesses for the period 1966-1972, which leads us to the conclusion that pricing structure of some of the businesses must have changed. When gross profits are reduced net earnings are affected. In order for the computation of lost earnings to be accurate, pricing policies of the businesses involved must be taken into consideration.

The conversion of lost sales into lost earnings was based on Dr. Oliver's calculations of projected sales with inflation. Dr. Oliver was furnished gross sales for each of the businesses for the base period and from this date projected sales with an inflation factor added.

Dr. Oliver candidly admitted that he made no study of all facts relevant to management of the businesses to determine what caused deviations in the base period. He said his study showed that something happened to all 12 businesses almost simultaneously, and if he were to make a study to discover all facts relevant to the fluctuation in gross sales he would consider population growth, disasters, and other things of like nature. He stated he would have included a number of factors other

than gross sales and specifically listed: managerial skills, a change in amounts spent on advertising, increases in fixed costs of employees and decline in the availability of money to spend. He said the only factor communicated to him was the boycott and that there might well be other factors. He assumed the impact on sales was caused by the boycott and concluded the boycott, as an economic sanction, had a very dramatic impact, which was its goal. He testified that there was a recession in 1970 and he would not exclude this factor from the trend sales line but did not show that the effect of the recession was included. He stated the recession would have had a dramatic effect on the business of Claiborne Hardware.

One of the problems with the projected sales as calculated by Dr. Oliver is that his calculations failed to take into consideration other facts which we feel would affect the estimate of future sales. (1) Would additional inventory be required to increase sales? (2) Would the individual complainants have the capital necessary to increase the inventory, if necessary? (3) What would the additional capital cost? (4) Would the physical plant of each business be large enough to house an increased inventory or would additions be necessary? (5) Was there any change in management or employees that would affect the volume of sales?

We are of the opinion that these factors, together with the factors mentioned by Dr. Oliver, should be taken into consideration in making an estimate of future sales and that inclusion of all of these factors, or their exclusion with an explanation, if not applicable, is necessary for one attempting to prove lost earnings.

Another problem with the projected sales with inflation is that the gross sales furnished Dr. Oliver for the base period are not consistent. In some gross sales included sales taxes, in other sales taxes were excluded, and in some the inclusion or exclusion of sales tax varied

from year to year. We recognize that these variations might have a minimal effect on the projections, but since this case is being reversed for retrial on the issue of damages, the gross sales for the base period should be stated accurately and consistently.

The chancellor also allowed some of the complainants damages for the loss of good will. Good will was defined in the transmittal letter as follows:

> . . . Goodwill is an intangible asset which exists when the actual or expected earnings produced by the assets of a business, exclusive of goodwill, are in excess of a normal return. Goodwill is generated by any causes of attractive earnings results, such as satisfactory customer relations, location, good employee relations, or "know-how."
>
> The measurement of goodwill is most commonly necessitated when a business is purchased in order to determine a suitable purchase price for the entire business entity and is, therefore, often determined by sheer bargaining.

When a business was sold by a willing buyer to a willing seller, good will is the amount of the purchase price in excess of the tangible assets of the business.

The accountants also explained, in their letter of transmittal, their method of arriving at good will.

> (3) Capitalization of Excess Earnings—a percentage return on the average annual value of the tangible assets of a business is determined, using a period of years immediately prior to the valuation date. The amount of the percentage return on tangible assets, thus determined, is deducted from the average earnings of the business for such period and the remainder is considered to be the amount of the average annual earnings from the intangible assets (goodwill) of the business. This amount capitalized

at an applicable percentage is the value of the goodwill.

The Capitalization of Excess Earnings Method is considered the most theoretically sound approach by standard accounting texts and is established by the Internal Revenue Service as its accepted guideline in Revenue Ruling 68-609. (Revenue Ruling 68-609 is cited in its entirety in Appendix A of this report). We have, therefore, used this method as the basis for our computation of lost goodwill. A brief summary of our computation follows. For a more technical explanation of our application of this method, see Note 4 on page 8.

Our computation is made as of December 31, 1972, and is based on the earnings of the most recent year. We have basically considered the loss of the asset, goodwill, to the business as of that date as if a valuation were made for the sale of each concern. The reason we have used the most recent year's results rather than an average of prior years, is that in this particular case, a potential purchaser would evaluate the *current degree of recovery* from prior losses. The use of 3 to 5 years prior earnings average would tend to overstate the amount of goodwill lost and would also result in a loss of goodwill for many businesses which have fully recovered per Dr. Oliver's computations.

Recovery from the boycott impact, according to Dr. Oliver, is evidenced by the crossing of the actual sales line above the "trend line" in any year after the initial boycott impact in 1966. For example, in the case of Hudson on page 34, actual sales exceed "trend line sales" for the year 1972. Therefore, according to Dr. Oliver, Hudson has recovered from the boycott impact, and no loss of goodwill can be determined in his case (See page 39).

Since earnings lost in the year 1972 resulted from unfavorable external events, they were, therefore, a loss of return on the intangible asset of goodwill, (i.e., satisfactory customer relations, etc.). We have, therefore, capitalized the amount of earnings lost in 1972 at 15%, the rate of expected return from intangible assets as set forth in Revenue Ruling 68-609 for businesses with a relatively small risk factor and stable earnings. The resulting amount is the lost goodwill as measured at 12/31/72. (See the computation for McDaniel on page 30).

As we understand the exhibits and testimony of the accountants they did not employ the method set forth in their transmittal letter. We fail to find that the accountants computed the percentage return on the tangible assets of the businesses involved in this case and deducted this amount from net earnings. We also note that Revenue Ruling 68-609 requires sole proprietorships or partnerships to deduct from earnings a reasonable amount for services performed by the owners or partners engaged in the business. This was not done.

Failure to compute good will properly resulted in an overvaluation of good will. For example, Barbara B. Ellis and Norman N. Ellis, doing business as Ellis Variety Store, were awarded $96,633 for loss of good will. The income tax returns for these complainants show a beginning inventory for the years 1960-68 as follows:

1960	$7,058.27
1961	4,774.15
1962	3,174.08
1963	4,595.96
1964	6,146.34
1965	7,659.26
1966	8,479.32
1967	6,794.19
1968	9,998.93

The tax return for 1968 also showed other tangible assets used in the business amounted to $3,000. Adding these tangible assets to the beginning inventory for 1968 makes a total of $12,998.93 of tangible assets used in the business. An allowance of $96,633 damages for loss of good will is a gross overvaluation of good will.

We reverse the allowance for loss of good will to each complainant and remand for further evidence on loss of good will. On retrial the court should determine whether a business should be permitted to recover profits on lost sales plus loss of good will. It appears to us there is a strong probability that allowing recovery of profits on lost sales plus loss of good will would pyramid damages and amount to double recovery. We express no opinion on this question but expert testimony should deal with the question on retrial.

We are satisfied that complainants suffered some damages resulting from the boycott but are of the opinion that the amount allowed was excessive under the evidence presented.

We hold the chancellor erred in failing to reduce the award of damages to complainants McDaniel, Norman N. Ellis and Barbara B. Ellis for the amount earned by them while they were out of business. *Southern Christian Leadership Conference, Inc. v. A. G. Corp.*, 241 So.2d 619 (Miss. 1970).

Complainants were under a duty to mitigate damages and any award made to complainants shall be reduced by their earnings.

AFFIRMED IN PART AND REVERSED AND RENDERED IN PART ON LIABILITY; REVERSED AND RENDERED IN PART ON DAMAGES; REVERSED AND REMANDED IN PART ON DAMAGES.

PATTERSON, C. J., SMITH and ROBERTSON, P. JJ., and SUGG, WALKER, BROOM, LEE and BOWLING, JJ., concur.

APPENDIX B

IN THE CHANCERY COURT
OF THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

No. 78,353

CLAIBORNE HARDWARE COMPANY, *et al.*
Complainants

VS.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*
Defendants

[Filed Aug. 9, 1976]

OPINION OF THE COURT

This cause was commenced in this court as an attachment in chancery. The bill of complaint also seeks injunctive relief. Twenty-four complainants, both individual and corporate, all of whom reside or are domiciled in Claiborne County, Mississippi, brought this action against the National Association for the Advancement of Colored People (NAACP), a New York corporation authorized to carry on its activities in Mississippi, Mississippi Action for Progress, Inc. (MAP), a Mississippi corporation, and 146 individual defendants. Fifty-five banks within this state were made attachment defendants. Answers filed by eleven banks reported a total of $16,831.67 in their hands belonging to the NAACP. Sixteen of the attachment defendants did not file answers. The remaining twenty-eight banks filed answers showing no funds of the NAACP in their possession.

THE PROCEDURAL BACKGROUND

This lengthy procedure began on October 31, 1969, when the bill of complainant was filed in this court. One week later (November 7, 1969) Aaron Henry, one of the individual defendants, filed a complaint in the United States Court for the Northern District of Mississippi, at Clarksdale, against three Clarksdale banks seeking an injunction against the detention of funds arising from the attachment process of this court.[1] The federal court ordered the state court complainants to be made parties defendant and permitted the NAACP and MAP to intervene as plaintiffs. On June 10, 1970, the federal court enjoined the state court complainants from proceeding with their action in this court. On June 23, 1971, the United States Court of Appeals for the Fifth Circuit reversed the judgment of the district court, vacated the injunction, and remanded the cause with a directive to the district court to dismiss for lack of jurisdiction. On September 7, 1971, the Court of Appeals for the Fifth Circuit denied a petition for rehearing. On November 1, 1971, the plaintiffs, Henry, et al., petitioned the United States Supreme Court for a writ of certiorari. The Supreme Court denied certiorari in March, 1972. The Court of Appeals for the Fifth Circuit issued its mandate to the district court on April 4, 1972, and on June 14, 1972, the district court dismissed the complaint. The district court also refused to consider any issue of damages for the wrongful suit for injunction, holding that it had been found to be without jurisdiction in the matter.

Trial in this court began on June 11, 1973. The testimony of 144 witnesses was presented to this court. The

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[1] Aaron Henry, et al. v. First National Bank of Clarksdale, 444 F.2d 1300 (1971), cert den 405 U.S. 1019, 92 S. Ct. 1284, 31 L. Ed. 2d 483 (1972), reh den 406 U.S. 963, 92 S. Ct. 2057, 32 L. Ed. 2d 351 (1972).

trial lasted approximately eight months, after which the parties filed voluminous briefs. Several extensions of time for filing briefs were granted.

THE PLEADINGS

In the bill of complaint the complainants charged that beginning on or about April 1, 1966, and continuing daily thereafter, the principal defendants conspired to injure and ruin complainants' businesses. It was alleged that to carry out their illegal objectives the defendants employed injurious falsehoods, deception, force, intimidation, threats, coercion and violence against customers and prospective customers of complainants, and thereby brought about an effective and injurious common-law secondary boycott; that the principal defendants utilized mass picketing, made public speeches, stationed guards in the vicinity of complainants' business houses, physically attacked complainants' patrons and obstructed the entrances of their stores, preventing customers from entering and trading; and that they threatened, coerced and abused complainants' customers and prospective customers, using demeaning, offensive and insulting language toward them, and destroyed their property.

The bill of complaint further alleged that all of the complainants were caused to suffer great and irreparable harm, loss and damages because of the acts of the principal defendants. The complainants charged the principal defendants, individually and collectively, with the tortious interference with their rights to pursue a lawful trade and business; with restraining trade in Claiborne County in violation of Sections 1088, 1089 and 1092 of the Mississippi Code of 1942 (Secs. 75-21-1, 75-21-3, and 75-2-9, Miss. Code 1972). Complainants asked attachment of funds of the defendant NAACP, pursuant to Section 2729, et seq., Miss. Code 1942 (Sec. 11-3-1, et seq., Miss. Code 1972). Various banks were named

as having in their possession funds of the NAACP, a nonresident corporation.

The bill of complaint asked that the principal defendants be enjoined from: (1) picketing the premises of the various white-owned business establishments; (2) stationing guards in the vicinity of such businesses; (3) soliciting, threatening, coercing or restraining any person from trading with complainants; (4) continuing with the secondary boycott; (5) asking others to cease doing business with the complainants; and (6) restraining trade in violation of the laws of this State. The complainants asked damages against the defendants in the total sum of $3,542,466.06, jointly and severally; and prayed that damages, penalties and attorneys' fees be awarded each of the complainants, together with general and special relief.

On April 30, 1970, Harold J. Barkley, Jr. moved the Court for authority to intervene as a complainant, as the trustee in bankruptcy in the matter of Radford S. Jones, d/b/a "Jones' Five 'n' Ten Store." There was no objection and the Court entered its order sustaining the motion. No evidence was presented at the hearing to support the allegations of intervention and this intervenor was dismissed.

On December 27, 1969, the NAACP filed a general and a special demurrer alleging that the demands of the bill of complainant were unconstitutional because they are violative of the rights of defendants under the First and Fourteenth Amendments of the Constitution of the United States. All of the individual defendants joined in these demurrers, with the exception of the defendant Rev. Dominic Cangemi who joined in the special demurrer, only. The Court overruled the demurrers.

On February 23, 1970, defendant NAACP filed a motion for a bill of particulars. The individual defendants joined in this motion. Defendant MAP filed

its own "Motion and Affidavit for Bill of Particulars." The Court directed complainants to furnish the bill of particulars.

Defendant NAACP answered the bill on June 8, 1970, admitting that it was a New York corporation authorized to do and doing business in the State of Mississippi, and that it had funds in the First National Bank of Jackson, Mississippi. It denied the other allegations of the bill of complainant. It filed a cross-bill in which it prayed for actual and punitive damages in the sum of $1,000,000.00. On June 8, 1970, the individual defendants, except Rev. Dominic Cangemi, filed their answer and cross-bill. They asked that each individual defendant be awarded $160,000.00 as damages, except defendants Evers, Ross, Collins, Martin, Smith, Lightfoot, Wyatt, Allen and Thompson, for whom the sum of $250,000.00 each was asked.

On June 8, 1970, the defendant MAP mailed to the Clerk of this Court, with copies to all counsel, its separate answer, wherein it denied all of the allegations of the bill of complainant and the bill of particulars, except the allegations relating to its purposes, identity, domicile, etc., which were admitted.

MAP set out affirmative matter in its answer to the effect that it was a part of a federal program to eliminate poverty and to provide a means for low-income persons to participate in that program.

FACTS IN THE RECORD

At the threshold, this Court accords judicial notice to the Mississippi Statistical Abstract (1971), prepared by the College of Business and Industry of Mississippi State University, and the Mississippi Official and Statistical Register, compiled by the Secretary of State, for the purpose of comparative statistics relative to the white-to-black ratio of population in Claiborne County,

Mississippi, and in the United States and the State of Mississippi as a whole. Since this case, most unfortunately, has a racial background, this comparison is highly important. In the decade commencing in 1960 the United States were comprised of 88.8 per cent white and 10.6 per cent black (with "other" races comprising .6 per cent). At that time the State of Mississippi had a total population of 2,178,141, of which 57.7 per cent were white and 42 per cent were black (with "other" races comprising the fraction of one per cent remainder). However, in Claiborne County, Mississippi, of the total population of 10,900 persons, only 2,500 were white; thus, the ratio was approximately 76 per cent non-white to 24 per cent white. It follows that the white merchants of Claiborne County were highly susceptible to economic ruin when faced with a boycott (or "selective buying campaign") against them by over three-fourths of the population of the county.

It is a historical and undeniable fact that whites had exercised complete control of government at all levels in the State of Mississippi from the time this area became a part of the United States and until the time of the occurrences herein, with the possible exception of a relatively short period immediately following the American Civil War. Claiborne County was no exception, although its population was comprised of less than one-fourth white people. It was precisely because of such conditions in Mississippi and several other states that Congress was prompted to enact the Voting Rights Act of 1965. That Act was the law at the time the boycott sponsored by the NAACP was instigated (i.e., on April 1, 1966). The evidence adduced at the hearing showed that blacks had no difficulty in becoming registered voters of Claiborne County under the terms of the Act. As a matter of fact, the preamble to the list of "demands" precipitating the boycott (which will be discussed further *infra*) contains this paragraph:

> *"Because Negroes now constitute a majority of the registered voters in Port Gibson and Claiborne County,* it is obvious that Negroes will have a powerful voice in the future affairs of the City and County." (Emphasis added).

The demands of the blacks were principally addressed to governmental changes. In the year 1967 a general election was to be held. It was entirely within the grasp of this three-fourths black majority to elect whomever they desired to fill all county and municipal offices and thereby effectuate whatever changes or reforms they saw fit and proper without the necessity of rancor, ill-will, threats, violence, or the visitation of economic ruin on the white merchants of the area.

The county seat and largest municipality in Claiborne County is the City of Port Gibson. In the latter part of the year 1965, a group of black leaders in Port Gibson and other areas of Claiborne County formed a "Human Relations Committee." This committee was comprised of twelve blacks, one of them an educator, three of them businessmen, and eight of them Christian ministers. This group presented a petition containing thirteen demands to the Port Gibson Chamber of Commerce. These demands were overwhelmingly of a public and governmental nature, and were beyond the power of the Chamber of Commerce to grant. It is apparent that the petition should have been presented to the governing authorities for redress of any grievances.

In late 1965 or early 1966 the NAACP began organizing a chapter in Claiborne County. The dominant figure in this effort was Charles Evers, the Field Secretary of the NAACP in Mississippi. Organizational meetings were held in the First Baptist Church in Port Gibson. Upon completion of the organization, the Reverend James N. Dorsey, the pastor of the church, was elected as the first president of the Claiborne County

Branch of the NAACP (Claiborne NAACP). Thereafter, regular meetings were held each Tuesday evening at the First Baptist Church of Port Gibson.

The petition of the Human Relations Committee was considered by the Claiborne NAACP, and was deemed insufficient by Charles Evers and the other leaders of the organization. On March 14, 1966, a new set of "immediate needs," in letter form, was addressed to: The Mayor and Board of Aldermen (of Port Gibson), the Claiborne County Board of Supervisors and Board of Education, and Sheriff Dan S. McKay (Sheriff of Claiborne County). Apparently it was delivered to the officials to whom it was addressed on March 17, 1966. This letter is highly important in this case, and is here set out in its entirety as follows (except for date and addressees set out above):

"Gentlemen:

"This letter is addressed to you as elected officials and as leaders in business, religious and civic affairs. We hope you will communicate its contents to other citizens of the county and city also.

"We plan to make this letter public by release to the press so that the issues may be aired thoroughly and so that everyone may contribute to the solution of difficulties in Port Gibson and Claiborne County.

"Because Negroes now constitute a majority of the registered voters in Port Gibson and Claiborne County, it is obvious that Negroes will have a powerful voice in the future affairs of the City and County.

"But progress in inter-racial cooperation cannot wait for elections of the future, since all citizens now are entitled to free exercise of their rights to public accommodations, public facilities, public services and entry into hospitals, schools, recreational

facilities, etc., protection of the law, participation in the election machiner (sic), service as jurors and all other rights which are ours by law, logic and American ethic.

"We hope it will not be necessary to resort to the kind of peaceful demonstrations and selective buying campaigns which have had to be used in other communities. It takes manpower, time and energy which could be better directed at solving these problems which exist in Port Gibson and Claiborne County by mutual cooperation and efforts at tolerant understanding.

"No one likes to have to resort to picketing and other kinds of demonstration—just as no one likes to be the target of this kind of demonstration. But this sort of thing is inevitable unless there can be real progress toward giving all citizens their equal rights. There seems sometimes to be no other alternative.

"Objectives of Negro citizens of Port Gibson and Claiborne County are, simply put, to have equality of opportunity, in every aspect of life, and to end the white supremacy which has pervaded community life. This implies many long-range objectives such as participation in decision-making at every level of community, civic, business and political affairs.

"The following are immediate needs, which should be met without delay so that all of us, white and Negro, may progress together and so that we may meet other community problems together as they arrive in the future.

"1. A community affairs committee, made up of both races, needs to be officially constituted by the Mayor and Board of Aldermen, the Board of Supervisors and the

undersigned, so that future problems may be anticipated and solved before they reach a breaking point.

"2. All public schools of Claiborne County and Port Gibson should be desegregated, both (sic) faculty, staff and student body this coming September, 1966.

"3. Three Negro policemen should be employed in Port Gibson so that there will be impartial enforcement of the laws. The Negro policemen should be assigned to work with the white policemen on an integrated basis, with power to arrest any lawbreaker.

"4. (Omitted. See letter of March 23, 1966, *infra*).

"5. (Omitted. See letter of March 23, 1966, *infra*).

"6. Negroes should be employed in the welfare office so that the County may demonstrate its good faith and impartiality.

"7. All business houses in the county should comply with the spirit and letter of the Civil Rights Act of 1964 by treating all customers alike and according them the use of all facilities.

"8. Verbal or physical abuse of citizens by law enforcement officers must cease and Negroes are not to be addressed by terms as 'boy,' 'girl,' 'shine,' 'uncle,' or any other offensive term, but as "Mr.,' 'Mrs,' or 'Miss,' as is the case with other citizens.

"9. Crossing guards are to be posted at all schools, not just the white schools.

"10. All funeral (sic) shall be accorded police escort.

"11. Negroes should be named to the Board of Education. And they should be Negroes satisfactory to Negro leadership.

"12. Public improvements should (sic) as roads, street (sic), lights and sewer system are most needed in predominately (sic) Negro residential areas now because of past neglect. A program for remedying this situation should be embarked on immediately.

"13. The Mayor, Board of Aldermen, County officials, businessmen and church leaders should denounce all extreme groups.

"14. The courtroom and all other public facilities are to be desegregated immediately by order of the proper officials, recreational and other public-owned facilities.

"15. Immediate steps must be taken to insure the selection of Negroes for jury duty in as close a relationship to the population breakdown as possible.

"16. Provision must be made for the use of Negroes as election officials and for all other public duties.

"17. Official and semi-official boards and commissions, now and in the future, must include appropriate numbers of Negro citizens.

"18. The immediate desegregation of the Claiborne County Hospital, staff and patients.

"19. Bus stations must be integrated so that Negroes may be able to use all facilities.

"20. All snack bars should be removed from classrooms.

"21. Salesmen should be bared (sic) from entering classrooms interrupting classes.

"Please communicate with the undersigned so that we may arrange a meeting to discuss the details of solutions to these problems.

"Very truly yours,

(Signed)

"Calvin C. Williams, Chairman

"Alexander Collins, Sec.

"James N. Dorsey

"Floyd D. Rollins

"Nathaniel H. Jones

"Walter L. Griffin Sr.

"Mack Tisdale"

It must be observed that these objectives are laudable, commendable and highly praiseworthy for the most part. The purpose was to gain equal rights and opportunities for Negro citizens. The fallacy, of course, was the veiled threat of a "selective buying campaign" directed against the business community unless the addressees, that is to say, the public officials, acceded to these "immediate needs." The merchants in Port Gibson and Claiborne County, although having the possibility or onus of "demonstrations and selective buying campaigns which have had to be used in other communities" cast upon them, nevertheless had no power whatever to grant

any of these requests or demands of a public or governmental nature.

It will be noted that demands (or "immediate needs") 4 and 5 were omitted from the letter of March 14, 1966. Under date of March 23, 1966, the following letter was written:

"March 23, 1966

"Mayor and Board of Aldermen

"Claiborne County Board of Supervisors and Board of Education

"Chamber of Commerce

"Sheriff Dan S. McKay

"Port Gibson, Mississippi

"Gentlemen:

"We are submitting the fourth and fifth items that were off the pertition (sic) that was presented March 17, 1966.

"4. All stores must employ Negro clerks and cashiers.

"A. Two or more deputy sheriffs must be hired.

"B. The city limits be extended to include Thompson Sub Division (sic), and all other areas where there is a concentrated group of citizens of Port Gibson.

"C. A strong housing code should be adopted and enforced.

"D. The teacher's (sic) lounge should be restored for teachers use rather than a centralize (sic) area for selling.

"5. That a Negro County Agent be employed, since there is (sic) more than 8,239 Negroes in Claiborne County.

"A. That a full time home demonstration agent be employed to assist the farm women and young ladies to become effective Homemakers, including planning, feeding, and caring for the farm families.

"We shall be awaiting your answer by April 1, 1966.

"Very Truly yours,

(Signed)

"C. C. Williams

"Alexander Collins

"Walter L. Griffin Sr.

"Nathaniel H. Jones

"Rev. Mack Tisdale

"F. D. Rollins

"James N. Dorsey

"Charles Evers"

It will be noted that one addressee was added in this letter, i. e. the Chamber of Commerce. Further, this letter contained one additional signature, that of Charles Evers.

Although there was no reference to any initiating group or organization in either of these letters, the testimony at the hearing clearly established that the persons whose signatures appear thereon were selected by the Claiborne NAACP, as its representatives. Nathaniel H.

Jones, a member of this committee, testified that the committee was appointed by the "Board of the NAACP" and by certain concerned black people. He said that the list of demands was "mostly prepared at Mr. Collins' barber shop" (having reference to Alexander Collins, a member of the Claiborne NAACP, who was selected as the Secretary of the committee). He further testified that the list of grievances, or demands, dated March 14, 1966, was presented for approval at the Claiborne NAACP meeting held on the first Tuesday evening in March, 1966, by James N. Dorsey, President, and that the list was read to the meeting by Dorothy Brandon, Claiborne NAACP Secretary, and that the approximately 500 people present voted their approval unanimously. Other testimony in the record bears out Jones' testimony. Walter Griffin, Sr., another member of the committee, testified concerning the addenda prepared on March 23, 1966; he said that the committee discussed these demands with Charles Evers, and that he signed it at a Tuesday evening meeting of the Claiborne NAACP.

The deadline for action to be taken by the Mayor and Board of Aldermen of Port Gibson, the Claiborne County Board of Supervisors, the Claiborne County Board of Education, the Port Gibson Chamber of Commerce, and Sheriff Dan S. McKay was April 1, 1966.

No favorable answer was forthcoming from the addressees on April 1, 1966. The Claiborne NAACP held a meeting that morning at the First Baptist Church, under the leadership of the national NAACP Field Secretary for Mississippi, Charles Evers. Several hundred black people attended the meeting, and the purpose was to decide what action should be taken relative to the twenty-one demands. Speeches were made by Evers and others, and a vote was taken. It was the unanimous vote of those present, without dissent, to place a boycott on the white merchants of Port Gibson and Claiborne County.

Although the white merchants were not addressees of the aforesaid demands, nevertheless the direct action of this group of black people was aimed at them. The purpose was to coerce them to bring pressure to bear on the municipal and county governments so that the demands would be satisfied. The alternative was economic ruin. This was an established tactic of the NAACP. The testimony of many of the defendants clearly shows this purpose. For example: Nathaniel Jones, one of the committeemen who signed the demand letters, said under oath that the blacks involved "expected white business people to put pressure on the Board of Aldermen and the Board of Supervisors to grant the demands;" he further said it was all right for blacks to buy from white merchants "as long as they are not in Claiborne County." Walter Griffin, Sr., another of the signers, testified that it was the intention to picket the white merchants if the public officials didn't grant the demands; and this man's testimony showed that this plan was a preconceived thing, even before the April 1, 1966, meeting was held. He also testified that the purpose of the boycott was to force the white merchants to bring pressure to bear on the public officials so that the demands would be met. Geneva Collins, one of the defendants, who was elected as Chancery Clerk of Claiborne County in 1967, and who is the wife of Alexander Collins, secretary of the NAACP-appointed committee, testified that the white merchants, perhaps, "could have some influence" in seeing that the demands were met, and that the boycott was placed on them for that reason. James Whitney, a defendant who testified that he was one of the "store watchers" about whom more will be said later, said that to him a boycott means to "demand someone to do something you want done," and he further said that the reason for the boycott was because the twenty-one demands were not met, and they expected the white merchants to go to the public authorities and get them to grant the

demands. Charles Evers, unquestionably the leader of this endeavor in his capacity as the Field Secretary of the NAACP in Mississippi, testified that the demands were almost identical to those made in Fayette (Jefferson County) and Natchez (Adams County), Mississippi, which resulted in NAACP-sponsored boycotts. Evers proclaimed in his testimony that "I am the best thing that ever happened to them (black people);" he said his actions were aimed at "mean, racist white folks;" he said the white merchants could exert influence on the public officials, and that "power in the community was the business man, no question about that." It would be redundant and superfluous to recount all of the testimony given by NAACP members in this regard. It was amply shown by the testimony that the purpose was simply to bring financial ruin to the white merchants unless they forced the local governmental officials to grant those demands.

Evers made a speech to several hundred black people from the steps of the Claiborne County Courthouse in Port Gibson on April 1, 1966. The boycott began immediately thereafter.

Early in the boycott the NAACP designated a group of young black males as "store watchers" or "enforcers." In his speech of April 1, 1966, Evers told his audience that they would be watched and that the blacks who traded with white merchants would be *answerable to him.* According to Sheriff Dan McKay,[2] who was present

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[2] Sheriff Dan McKay is a Caucasian. It is most noteworthy that even though he had a black opponent in the election for Sheriff of Claiborne County in 1971, and even though the electorate was overwhelmingly black, he was elected. He had served as Sheriff from 1964 to 1968, and in the general elections of 1967 his wife was elected as Sheriff although she had black opposition and although black voters far outnumbered white voters. From 1968 to 1972, he served as his wife's chief deputy. It is most apparent that this man was trusted by the black people of the

during the speech, Evers told the assembled black people that any "uncle toms" who broke the boycott would "have their necks broken" by their own people. Evers' remarks were directed to all 8,000-plus black residents of Claiborne County, and not merely the relatively few members of the Claiborne NAACP. The evidence shows that the presence of "store watchers" or "enforcers" in the vicinity of the white merchants' business houses was highly effective as a deterrent to black patronage of those merchants.

The individual defendants who were members of the NAACP, and who testified, approved of the demands made upon the public officials, and the evidence shows that they agreed to, and did participate in, the boycott by withdrawing and withholding their trade and patronage from the white merchants. However, none of these witnesses testified that he or she had a personal dispute with any white merchant in Claiborne County. None of these witnesses testified that he or she ever asked for or sought a job from any white merchant; nor did any of these witnesses represent any other black person who was seeking a job.

On the afternoon of the day the boycott began, i. e., on April 1, 1966, the NAACP staged the first of a great number of marches and demonstrations through the business district of Port Gibson to inform the white merchants and other white citizens, as well as all black members of the community, that the NAACP had called upon the Negro citizens to withdraw and withhold all trade from the white merchants. After the initial march, pickets carrying signs walked along the sidewalks in front of the white business houses. Periodic marches and speeches continued in Port Gibson. Pickets were often present in the vicinity of white-owned stores on

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county, and that they had faith in his fairness. The court must take the position that his testimony was unbiased and accurate.

the outskirts of Port Gibson. The legend on the signs carried by them advised that the NAACP had Port Gibson under boycott. Although less frequent, there was marching and picketing in the small Claiborne County communities of Hermanville and Pattison.

The "store watchers" or "enforcers" on occasion physically stopped and blocked black customers and instructed them not to trade with white merchants. Black people were threatened with physical violence, and threatening and abusive telephone calls were made to blacks who were seen trading with white merchants. Some blacks were physically assaulted for continuing to trade with white merchants after being warned. Personal property purchased in white-owned stores by blacks was taken from them and destroyed. On at least two occasions gunshots were fired into the houses of black people who continued to trade with white-owned business establishments.

The names of black citizens who were seen trading with whites were read out at NAACP meetings, and these names were published in a mimeographed tabloid called the "Black Times." They were branded as traitors to the black cause, called demeaning names, and socially ostracized for merely trading with whites.

In July, 1966, a group of young black men organized a militant unit called the "Deacons" or "Black Hats." They armed themselves and purchased radio transmitters and receivers ("walkie-talkies") for automobile and foot patrol. They used this radio equipment to communicate with each other in surveillance of the white business houses. There is contradictory evidence as to whether or not this unit openly engaged in military drills, but the minutes of the organization showed that they carried weapons, purchased ammunition, and engaged in practice-shooting on a target range south of Port Gibson. The minutes showed that the membership of the "Deacons" or "Black Hats" was comprised of the following:

Atlas, Alonzo	Henry, Roosevelt	Scott, Elmo
Atlas, Morris	Johnson, Lewis	Scott, James
Anderson, Roosevelt	Johnson, Hugh	Shields, Rudolph
Bailey, Calvin	Jenkins, George	Shorter, Willie
Barnes, Timothy	Jones, Ernest	Smith, Bill B.
Booker, John	Jones, Nathaniel	Thomas, Merritt
Butler, Robert	Kilcrease, Melvin	Trevillion, Jody
Davis, Alfred	Lipscomb, Carl	Walker, George
Ellis, Jimmy	Lipscomb, Charles	Warner, Julius
Goldsberry, James	Minor, Nathaniel	Whitney, James
Greer, James	Noble, Phenix	Wilson, Walter
Grove, Charles	Odom, James	Wilson, Leonard
Gusta, Andrew	Porter, Frank	Wood, Bobby
Harris, Robert	Rice, Lawrence	Miller, Charlie

The "prime mover" of this group was Rudolph Shields, who came to this area of Mississippi from Chicago. Shields said that the organization was for the purpose of "frightening the Klan" and to protect blacks. The evidence is silent as to whether a unit of the Ku Klux Klan even existed in Claiborne County. But it is clear that this group of "Deacons" or "Black Hats" was a cause of pervasive fear among black citizens of Claiborne County, at least to the extent of preventing trade with white businesses.

Some time in the month of September, 1966, in Yazoo City, Mississippi, Owen Cooper, LeRoy Percy, and Hodding Carter, III, met and resolved to secure a charter from the State of Mississippi for a corporation called "Mississippi Action for Progress, Inc." (MAP). The purpose of MAP was to develop a community action program in twenty counties within the state "to eliminate the paradox of poverty." The charter of incorporation was approved on September 13, 1966.

Claiborne is one of the twenty counties in which MAP operates. Many of the leaders of the NAACP and the

boycott were initially employed by, or served on advisory boards of, MAP in its Claiborne County operations. Calvin Williams, secretary of the NAACP committee that prepared and submitted the demands on the public officials, and who was one of the black leaders in the boycott of the white merchants, became the chief executive officer of the MAP operation in the area encompassing Claiborne County.

The executive director of MAP, Walter D. Smith, advised against the employment of Calvin Williams because of his leadership activities in the Claiborne County boycott. This advice was disregarded.

Complaints were lodged with MAP officials concerning the activities of MAP employees in Claiborne County in behalf of the NAACP-sponsored boycott, but apparently those complaints were ignored.

On January 25, 1967, the MAP Board of Directors held a special meeting in Jackson. Among the matters coming before that meeting was the effect of the boycott on MAP's Claiborne County operation. The purchase of food for the feeding of children at the Head Start Centers in Claiborne County was discussed. Price, a white person and assistant nutritionist, reported the attempt to formulate a plan to purchase food from both white and black merchants in Claiborne County. Walter D. Smith listed the four white-owned stores selected as: Piggly-Wiggly, M & M Grocery, Jitney Jungle, and Ellis Grocery; and the four black-owned stores selected as: Lee's Grocery, Ross's Grocery, Wyatt's Store, and Parker's Store.

Directors of MAP made a telephone call to Charles Evers, who, as mentioned herein above, was at that time serving as the Field Secretary of the NAACP in Mississippi, to attempt to get an agreement to the proposed "revolving plan" for food purchases in Claiborne County. Evers was adamant in his objection to the plan, and

MAP was unable to reach an agreement with him. Evers' own testimony substantiates this. He said, "We threatened to run them out of there," (speaking of MAP when he found out that groceries were being purchased from white merchants for the children in the Head Start Program). He (Evers) said he called MAP headquarters and strenuously objected; he said he told them that *if they were going to spend federal funds with whites they (the NAACP) had rather not have the MAP program.*

At the regular meeting of the MAP Board of Directors held in Jackson on February 16, 1967, Walter D. Smith, on that date MAP's executive director, made a report on the Claiborne County problem. He reported that on January 26, newspapers had published articles to the effect that the NAACP had lifted its boycott of the white merchants. Price, MAP's assistant nutritionist, met with the Reverend James N. Dorsey, President of the Claiborne NAACP, in Port Gibson on Friday, January 27, 1967. Price and Dorsey worked out a "revolving plan" whereby food for the Head Start Program would be purchased alternately from both white-owned and black-owned stores. This plan was considered by MAP to be satisfactory until it was discovered that although some white businesses had been released from the boycott by the NAACP, the white stores involved in the "revolving plan" had not been so released and were still under the boycott.

In the following week, MAP was informed that the cooks at the Head Start Centers in Claiborne County were afraid to go into the white-owned stores; they were fearful of being subjected to violence. However, during the course of the trial, the only Head Start cooks called to the witness stand testified that they refused to go into white-owned stores to purchase groceries for the children in the program *for the reason that they were in favor of the boycott and wanted to honor it.*

The MAP Board of Directors did not seek help from local law-enforcement officers, nor did they complain to United States authorities for protection of their cooks from possible reprisals arising from trade with the white merchants. They most apparently decided to go along with Evers' demands. They simply adopted a policy to cease all trading with white merchants in Claiborne County, and directed the Head Start officials to purchase food *only from black-owned stores.* MAP specified that if the black merchants were unable to supply the Head Start Centers with necessary merchandise, *then the needed items should be purchased from merchants outside Claiborne County.* In other words, MAP joined the boycott against the white-owned businesses and aided and abetted the NAACP in its avowed purpose of coercing the white merchants to force the governing authorities to grant their demands or face economic disaster. In fact, MAP was continuing that practice at the time of the trial of this cause.

MAP attorneys Eddie H. Tucker and Francis B. Stevens, by letter dated February 16, 1967, advised Walter D. Smith that based on a ruling by General Counsel of the OEO, MAP was not a Community Action Agency, but instead was a "single purpose grantee," i. e., a private agency, as opposed to a public agency, and that as a result the Hatch Act had only limited application regarding MAP employees. Messrs. Tucker and Stevens advised, however, that MAP's programs were not to be carried out in a manner supporting or identifying with partisan political activities.

MAP employees in Claiborne County continued to take an active part in the NAACP activities and to support the boycott by picketing and marching.

The Reverend R. L. T. Smith, Sr., a black Christian minister, was an officer and director of MAP. It was he who made the motion which unanimously carried at

the MAP board meeting of February 16, 1967, whereby the Head Start program was restricted to food purchases from black-owned stores, only. He also owned the largest number of shares in, and was a director of, "Our Mart, Inc.", a black-owned retail business organized about two weeks later in Port Gibson, which will be more fully discussed hereinafter. Morris K. Lewis, the executive director of MAP at the time of trial, was the auditor of Our Mart, Inc., and attended its board meetings and gave financial advice to this business. The manager of Our Mart, Inc., Nathaniel Jones [3], and others, were permitted to use the WATS telephone line paid for by MAP to secure business advice from Lewis.

On February 1, 1967, the mayor and board of aldermen employed William Holt as the first black policeman on the Port Gibson force. During the month of February, 1967, the boycott was lifted on some of the white merchants, viz.: Allen Motor Company, Segrest Service Station, Triangle Service Station, Port Gibson Service Station, McFatter's Drug Store, People's Clothing Store, Smith's Package Store, Jones' 5 & 10 Cent Store, Sherman Furniture Company, Patterson Furniture Company, H. Frishman Clothing Store, Easley Seed Store, and Standard Service Station.

On March 1, 1967, a certificate of incorporation was issued to Our Mart, Inc. This corporation was organized for the purpose of engaging in the wholesale and retail grocery and clothing business in Port Gibson. Defendant Marguerite Thompson initiated the organization of this business, and at the regular NAACP meetings she urged the members to purchase stock shares in this enterprise at $25.00 per share. Defendants Julia Jones, Bessie

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[3] Nathaniel Jones was also a member of the NAACP-appointed committee that submitted the twenty-one demands to the public officials. His signature appears on both of the documents comprising the demands.

Buck and Marguerite Thompson were the original directors. All of the stock was owned by black people, and all of its officers were black. The black citizens of Claiborne County were urged to do their trading with Our Mart, Inc.

With the boycott in progress, the evidence shows that Our Mart, Inc. became an instant success. Similar white businesses lost sales and profits during this period.

On April 4, 1967, Dr. Martin Luther King was murdered in Memphis, Tennessee. The utterly senseless and tragic killing of this nationally known and respected black leader had a depressing effect on the black community of Claiborne County, and was disruptive, to say the least, of whatever cordial relations remained between the black and white races. It is difficult for this court to understand how the white people of Claiborne County, Mississippi, could be deemed responsible in any sense for a barbaric murder in Memphis, Tennessee; nevertheless, the evidence shows that as a result of this unfortunate event the boycott aginst the white merchants of Port Gibson and Claiborne County was intensified or "tightened."

On April 8, 1967, the Trace Theatre in the business district of Port Gibson burned. During the summer of 1967, there were several other fires in and near Port Gibson.

In August, 1967, the regular quadrennial primary elections were held, with black candidates running for nomination for public office. In the general elections following, several black candidates were successful, including the defendant Geneva Collins, who was elected Chancery Clerk of Claiborne County.

Early on the evening of Friday, April 18, 1969, J. L. Wolf, the white assistant chief of police of Port Gibson, and Henery McQuein, a black policeman, went to the

home of Roosevelt "Dusty" Jackson, a young black man, to arrest him on the charge that he had interfered earlier in the day with a police officer who was attempting to arrest another black person. There were conflicting accounts of the events that occurred at Jackson's home. It was established, however, that some sort of struggle took place and that Jackson was shot and killed by Wolf.

A large crowd of black people gathered at the Jackson home. Apparently the crowd was not aware that Jackson was dead. His body was removed to a local hospital. A crowd of blacks then gathered at the hospital. When the crowd learned that Jackson was dead, it dispersed and later gathered at the First Baptist Church. NAACP leaders made speeches to the crowd.

As the night wore on, the situation in Port Gibson became tense. Violence became eminent when a black person threw an object of some sort at an automobile in which some white people were riding. At the request of the sheriff, a detachment of State Highway Patrol officers was sent to Port Gibson to augment the small group of law enforcement officers.

Shooting erupted at the church. A black man named Horace Lightfoot was beaten and had to be hospitalized. A State Highway Patrolman, Jim Taylor, was shot in the thigh. Another highway patrolman was hit in the face by a brick and had to have medical treatment. A black man named Tullos Brown was shot with a .22 caliber weapon.[4] When the situation was under control, sheriff's officers searched the blacks in the church and found no weapons; however, stashed in the church piano the officers found five handguns (one .32 caliber pistol and four .22 caliber pistols), two razors, and some pocket knives.

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[4] Officers of the Mississippi State Highway Patrol are armed with .357 Magnum revolvers. Apparently the bullet that wounded Brown came from another source during the melee.

On Saturday, April 19, 1969, the NAACP held a meeting at the church and then marched to the courthouse where Evers again spoke. Evers and other NAACP leaders called for the discharge of Wolf, McQuein, and the entire Port Gibson police force. When this demand was refused by the mayor and aldermen, the NAACP reimposed the boycott on all white merchants.

The situation was such that the mayor and board of aldermen put a dawn to dusk curfew into effect.

Aaron Henry, State NAACP President and a Director of the National NAACP, came to Port Gibson on Sunday, April 20, 1969, and spoke to a group of black people at Addison High School. He then joined local NAACP leaders in a protest march to the Jackson house. Henry sent a telegram to the Attorney General of the United States protesting Jackson's slaying.

On Monday, April 21, 1969, several hundred black people gathered at the home of Roosevelt Jackson. Charles Evers delivered an address from the front porch of the Jackson house. He called for an intensification of and a total and complete boycott of all white-owned business establishments in Claiborne County. The evidence shows that on this occasion he stated to the crowd: "If we catch any of you going in any of them racist stores, we're gonna break your damn neck."

In an obvious effort to cause the white merchants to bring pressure to bear on the mayor and board of aldermen to discharge Wolf and McQuein and, indeed, the entire Port Gibson police force, the NAACP intensified the boycott, together with marching, picketing and inflammatory speeches.

It was stipulated by respective counsel for the parties that defendant Addie Speed is a person non compos mentis and that defendants Ed Brandon, Ed Coleman, Jim Jones, Carrence Newsome, Floyd Rollins, Jim Smith,

Lawrence Speed, and Milton Trevillion had all died between the time of service of process in 1969 and the start of the trial in this court. They were all dismissed from the bill of complaint and the cross-bill by agreement. Defendants Maxine Brandon and Henry Hyder were minors at the time of the attempted service of process directly on them; by stipulation they were dismissed as defendants and cross-complainants. The Reverend Dominic Cangemi was also dismissed as a defendant and cross-complainant by agreement of counsel. Defendant James Mallory was dismissed by complainants when the court ruled that "Mallory" could not be changed to "Mallett" under the *idem sonans* rule. Therefore, the above named defendants will be dismissed as defendants and cross-complainants.

The evidence shows that the defendant Aaron Henry individually took no part in the secondary boycott of the complainants, engaged in no violence or threatening conduct toward anyone, joined no conspiracy as an individual to destroy the businesses of complainants, nor did he interfere with the businesses of the complainants except as a member of the board of directors of the defendant MAP. Therefore, the Court finds that the complainants failed to meet the burden of proof as to wrongdoing on the part of the defendant Aaron Henry, individually, and he will be, accordingly, dismissed as a defendant.

The Court finds that complainants met the burden of proof and established by an overwhelming preponderance of the evidence that the defendants set forth hereinbelow wrongfully combined and colluded in civil conspiracy, engaged in a secondary boycott against complainants, illegally created a monopoly, unlawfully interfered with the business relations of the complainants, and unlawfully conspired to and did destroy and damage the businesses of complainants, for which they are jointly and severally liable in damages and penalties:

1. National Association for the Advancement of Colored People;
2. Mississippi Action for Progress, Inc.;
3. Fred Allen;
4. Ike Allison;
5. Henry Anderson;
6. Alonzo Atlas;
7. Beatrice Atlas;
8. Calvin Bailey;
9. James Bailey;
10. McLawrence Bailey;
11. Joseph M. Barber;
12. Kenneth C. Barber;
13. Bill Beasley;
14. Helen Beasley;
15. Calvin Blackburn;
16. Marjorie W. Brandon;
17. Eli Brooks;
18. Priscilla Brooks;
19. Janie Brown;
20. Tullos Brown;
21. Eddie Burrell;
22. James Burrell;
23. Robert Butler, Jr.;
24. Arthur Lee Camphor;
25. Irma Rae Camphor;
26. W. E. Camphor;
27. Maggie Clark;
28. Alberta Coleman;
29. Charles Collier;
30. James Collier;
31. Alexander Collins;
32. Geneva Collins;
33. Scott Crowder;
34. Thelma Crowder;
35. Dan Currie (a/k/a Dan Curry);
36. Sarah Jane Currie (a/k/a Curry);

37. Charles Davis;
38. Mack Louis Davis;
39. Mary Ella Dee;
40. James Devoaual;
41. Alex Dorsey;
42. Sally Dorsey;
43. Geneva Durham;
44. Johnny Durham;
45. Mary Durham;
46. John Eggleston;
47. Harvey Ellis;
48. Jim Ellis, Jr.;
49. John Ellis;
50. Katie Ellis;
51. Rachael Ellis;
52. Charles Evers;
53. Ethel Graise;
54. James Gray;
55. Walter L. Griffin, Sr.;
56. Bernard Gusta;
57. Leesco Gusta (Guster);
58. Charlie Harris;
59. Cline Harvey;
60. Jim Holt;
61. Albert Jackson;
62. Willie Jackson;
63. E. J. Jennings;
64. Jesse Johnson;
65. Roscoe Johnson;
66. Julia Coleman Jones;
67. Lela Jones;
68. Marcus Jones;
69. Nathaniel H. Jones;
70. Samuel Jones, Jr.;
71. Bobby Kelly;
72. Bernice Lee;
73. Edward Lee;

74. Margaret Liggan (Liggins);
75. Horace Lightfoot;
76. Teddy Lipscomb;
77. Clarence Lucas;
78. Julia Lucas;
79. Nathaniel Martin;
80. Leander Monroe;
81. Johnny Moore;
82. Mary Lee Moore;
83. Willie V. Moore;
84. Ellis Neal;
85. Bessie Newman;
86. D. A. Newman;
87. Amos Newsome, Jr.;
88. James Odem;
89. Leona Owens;
90. Roosevelt Owens;
91. William Owens;
92. Henry Patton, Jr.;
93. Henry Otis Preston;
94. Evens Roberson;
95. Viola Robinson;
96. William (Willie) Robinson;
97. Mary Ross;
98. Odessa Ross;
99. William M. Matt Ross;
100. Elmo Scott;
101. Rudolph Shields;
102. Oliver Shinall;
103. Dora Shorter;
104. Roman Shorter;
105. Rosa Shorter;
106. Annie B. Smith;
107. Bilbo Smith;
108. Deloris Smith;
109. Leon Tarleton;
110. Ira Thomas;

111. Carl Thompson, Jr.;
112. Marguerite Thompson;
113. (Rev.) Mack Tisdale;
114. George Henry Walker;
115. Thelma K. Walker;
116. Eddie Walls;
117. Dessie Mae Walls;
118. Alex Warner;
119. Alonzo Warner;
120. Ethel Warner;
121. Albert Weathers;
122. Bome Wells;
123. Carl Lee Wells;
124. Eddie Lee Wells;
125. Katie Wells;
126. James Whitney;
127. Calvin Williams;
128. Ernestine Williams;
129. Aaron Wilson;
130. Gussie Pearl Wilson;
131. (Rev.) Willie Wilson;
132. Early Wren;
133. Ruby Wren;
134. Arthur Wyatt.

There is no issue of fact relative to the boycotting and picketing directed against the white merchants of Port Gibson and Claiborne County. The evidence is overwhelming that the primary dispute and controversy was between the public officials and the defendants. The testimony is without contradiction that the white merchants were conscripted in the controversy because the defendants believed them to be in a position of control or having the power to exert pressure to compel the public officials to grant the demands of the defendants. The only alternative was economic ruin. The overwhelming majority of the defendants called as adverse witnesses stated unequivocally that they had no dispute with

any white merchant. The overwhelming majority of the defense witnesses substantiated that the boycott tactic was utilized for the purpose of pressuring the white merchants to use their influence to persuade, or force, the municipal and county officials [5] to forthwith meet the demands of the defendants. The evidence is clear that the defendants engaged in a secondary boycott.

The evidence in the record is clear, and defendants have asserted in their post trial memorandum addressed to the court, that because the merchants placed under boycott were members of the Caucasian race, they were automatically and conclusively guilty of discrimination against the defendants and all black citizens of Claiborne County. Defendants contend that the boycott would have been avoided if the merchants had discussed the hiring of blacks. This assertion simply does not square with the record. Although some of the demands, e.g., Demand No. 4 in the demand letter of March 23, 1966 (i.e., "All stores must employ Negro clerks and cashiers"), standing alone, might avoid the aspects of a secondary boycott, nevertheless the principal thrust of the twenty-one demands is directed solely to the governing officials, and it was asserted throughout the trial that the primary purpose was to force the white merchants to bring pressure to bear on the public officials under threat of economic ruin. Those few demands made directly against the white merchants do not cleanse the defendants' actions of the taint of secondary boycott. Moreover, the evidence in the record shows that virtually all white merchants had black employees. But the hiring of black employees was no guarantee that the boycott would be lifted. For example, according to the testimony complainants Norman and Barbara Ellis hired a black em-

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[5] Including the Chancery Court of Claiborne County. See Demand No. 4(B) contained in the demand letter of March 23, 1966, *infra*. See also Sec. 3374-11, as amended, et seq., Miss. Code 1942 (Sec. 21-1-29, et seq., MCA 1972).

ployee as a clerk, but despite such action the boycott was placed on them and continued until they were forced out of business.

The record reveals that virtually none of the defendants took the trouble to determine whether the individual complainants employed black persons. Some of the defendants testified that they expected the complainants to discharge their white clerks and cashiers and hire blacks. They said they expected the white merchants to go so far as to discharge members of their own families and put blacks in their places as clerks and cashiers. Virtually every defendant testified that the blacks should continue the boycott until it was officially taken off by the NAACP.

It will be noted that at the time of Roosevelt Jackson's death, the boycott had been lifted as to certain of the white merchants. In his inflammatory speech regarding this episode, Evers again imposed the boycott on *all* white merchants, regardless of whether or not they were employing black persons, for the very apparent purpose of forcing the city authorities to fire Wolf and McQuein. The complainants had absolutely nothing to do with Jackson's death, but were threatened with financial ruin unless the municipal authorities granted the NAACP's demand in this connection.

The thread of fear and violence is woven throughout this case. Sheriff McKay testified that many times black people who wanted to trade with whites appealed to him for protection. He said at least 100 blacks complained to him that they had been interfered with when attempting to trade with white merchants. He said that when the "store watchers" relaxed the boycott would "loosen up," particularly on the outskirts of Port Gibson and in Hermanville and Pattison.

Very shortly after the boycott started, Sheriff McKay was near Hudson's Store when he noticed a group of

black people gathered around a car parked in front of the store. McKay approached the crowd and said he heard the defendant Calvin Williams tell a black man named Darden that he (Darden) could not go into the store because it was under boycott. McKay intervened, whereupon, he said, he heard Calvin Williams say to Darden: "You can go in, but the sheriff here isn't going to sleep with you at night." Darden did not go into the white store.

The atmosphere of fear that prevailed among blacks from 1966 until 1970 is strikingly revealed in the testimony of many of the witnesses.

James Gilmore, a black man, ignored the boycott. On the night of August 22, 1966, Gilmore's home was shot into. Elmo Scott, Jr., a member of the NAACP and of the "Deacons," together with two other young black men, Calvin Bailey and James Whitney, were arrested for this act and were convicted. The Mississippi Supreme Court reversed and remanded the case,[6] because of exclusion of Negroes from the grand jury. On retrial the jury was unable to agree. At the time of this trial, these people had not been arrested.

Defendant Rudolph J. (Rudy) Shields, formerly of Chicago, was the principal figure in several altercations. He boasted that he was "the most jailed person in the Claiborne County boycott." This man was the acknowledged leader of the "Deacons."

Laura Cullens testified that she lived about a quarter-mile from the city limits of Port Gibson on Highway 13. She refused to join the NAACP, and she ignored the boycott. Her name, among many others, was called out at the NAACP meetings, and she was derisively referred to as an "uncle tom." She was vilified and abused.

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[6] James Bernard Whitney, et al v. State, 205 So. 2d 284 (Miss. 1967).

In November, 1966, shotgun pellets were fired into her home.

Murriel Cullens, a son of Laura Cullens, did not observe the boycott and was the target of harrassment by blacks. Cullens' car was run into and badly damaged, and a brick was thrown through the windshield.

In April, 1966, soon after the boycott was started, Johnny Cox, a black man, and his wife were stopped by "store watchers" who attempted to prevent Mrs. Cox from going into the O.K. Cleaners, a white-owned business, to get some clothing. They had to get police protection in order to go into this cleaning establishment. About a week later, shotgun blasts were fired into the Cox home near Hermanville. Pistol shots were fired at Cox.

James Bailey, a 200-pound ex-football player, testified regarding his activities as a "store watcher." He was instructed to stop any black person he saw about to enter a white business house. He said that he had been a "bad boy" and had been convicted for molesting a child, resulting in sentence to the State Penitentiary. He was instructed to take the name of any black person going into a white-owned business, and report same to defendant Pete Gusta. On one occasion, he stopped Willie Butler, an elderly black female whom Bailey referred to as "Nig" Butler, as she was going into the Piggly-Wiggly store. Despite his warning, she went into the store and purchased some items of groceries. He watched her house and saw groceries delivered there by a white-owned store. He instructed her to stop trading with whites, whereupon she told him she would trade with whom she pleased. Bailey went into this elderly woman's yard and destroyed her flower garden by way of punishing her.

There is evidence in the record that an elderly black man called "Preacher" White (deceased at the time of

trial) was stripped of his clothing and whipped by a group of young blacks because he refused to honor the boycott.

Eddie Lewis, a black man, refused to join the NAACP and refused to honor the boycott. He was warned by Rudolph Shields to stay out of white-owned stores. Lewis purchased a bottle of whiskey at a white-owned liquor store, and was observed by Alfred Lee "Fats" Davis, an NAACP member and activist in the black boycott. Davis took the whiskey away from Lewis and denounced him in highly-uncomplimentary language for dealing with white people.

Willie Myles testified that he refused to stop trading with white stores. His name was read out at NAACP meetings as a "boycott breaker." He said he received threatening telephone calls. On one occasion, the Port Gibson police had to give him an escort when a carload of young blacks began following him. He received a warning that he was going to be whipped for buying gasoline at a white-owned service station.

Jasper Coleman, a black man, testified that he did not join the NAACP and continued to trade with white merchants after being warned by Walter Griffin and Calvin Bailey. The tires on Coleman's automobile were slashed.

Emerson Davis, a black commercial fisherman, testified that he refused to join the boycott. He testified that Rudolph Shields, Jimmy Ellis, and three other blacks grabbed him, carried him down a street and beat him. He was denounced as an "uncle tom." He said that he received threats on his life. James Bailey told him that he was going to kill him (Davis).

Unquestionably, the word "got around" in Fort Gibson and Claiborne County that physical harm, as well as vilification and ostracism, could very well be the lot of any black person observed trading with whites. As a matter

of fact, these things were promised by the Field Secretary of the National NAACP, Charles Evers, on at least two occasions, and it is apparent that the black people believed him. This NAACP-sponsored boycott was a definite success insofar as economic damage to the white merchants was concerned, even though the victims—the white merchants—had no power to grant the demands made on the county and municipal authorities.

The testimony revealed that the defendant NAACP provided attorneys to defend black persons arrested and charged with violating the laws of Mississippi in connection with acts arising from the boycott; and this nonresident corporation posted bail bonds and on occasion paid fines of black persons convicted of criminal charges.

APPLICATION OF THE LAW

Facts are set forth hereinabove which establish that on April 1, 1966, the NAACP and certain individuals, all of whom are members of the black race, entered into an agreement to withdraw and withhold their trade, and to induce all other members of the black race in Claiborne County to withdraw and withhold their trade, from the complainants, who are white individuals or corporations owned by white persons. The facts are beyond dispute that the purpose of the agreement was to interfere massively with the businesses of complainants and other white merchants of Claiborne County. Economic coercion by way of interjacence was the objective. These coercive efforts were designed and calculated to conscript the aid of the white merchants of Claiborne County by way of compelling them to influence, persuade, or force the public officials of Fort Gibson and Claiborne County to accede to the demands of the NAACP.

It is beyond dispute that the defendant MAP agreed to, and did, join with the NAACP and certain of the individual defendants in their plan of massive interference with

the businesses of complainants. Thereafter the officers and employees of MAP actively assisted the NAACP in carrying out the scheme of withholding business from all white merchants in Claiborne County.[7]

In carrying out the agreement and design, certain of the defendants, acting for all others, engaged in acts of physical force and violence against the persons and property of certain customers and prospective customers. Intimidation, threats, social ostracism, vilification, and traduction were some of the devices used by the defendants to achieve the desired results. Most effective, also, was the stationing of guards ("enforcers," "deacons," or "black hats") in the vicinity of white-owned businesses. Unquestionably, the evidence shows that the volition of many black persons was overcome out of sheer fear, and they were forced and compelled against their personal wills to withhold their trade and business intercourse from the complainants.

The evidence in this record shows that no defendant had any direct or primary dispute or controversy with any complainant or other white merchant of Claiborne County, except perhaps a few of the defendant witnesses who said they simply did not like white people generally.

The evidence in the record clearly establishes that the defendants by their acts interfered with the right of each of the complainants to pursue a lawful business. The evidence also clearly establishes that the defendants combined to commit, and certain defendants acting for all did commit, overt acts which were injurious to the trade and business of the complainants; and by such acts the

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[7] The evidence clearly established that the Head Start Centers in Claiborne County were directed to trade exclusively with certain black-owned stores in the county; except in the event any needed items were unavailable at those stores, *they were under orders to leave Claiborne County to make such purchases so as to completely avoid trading with white merchants in Claiborne County.*

defendants hindered the sale and purchase of commodities in Claiborne County in violation of the laws of the State of Mississippi.

The evidence in the record clearly establishes that defendants engaged in a conspiracy.

A criminal or a civil conspiracy is a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself unlawful by criminal or unlawful means. 16 Am. Jur. 2d, Conspiracy, Sec. 43, p. 149. Our Court has defined a conspiracy as "a combination of persons to accomplish an unlawful purpose or a lawful purpose unlawfully." Mississippi Power & Light Company v. Town of Coldwater, 234 Miss. 615, 636, 106 So. 2d 375, 381 (1958); Southern Christian Leadership Conference, Inc., et al. v. A. G. Corporation, 241 So. 2d 619, 623 (Miss. 1970).

The difference between civil conspiracy and criminal conspiracy is that in criminal conspiracy the agreement or conspiracy is the gravamen of the offense, but in civil actions the conspiracy is not the gravamen of the charge, but the gravamen of the tort is the damage resulting to the complainant from any overt act done pursuant to the common design. 15A C.J.S., Conspiracy, Sec. 1 (1), pp. 596-598. The primary purpose of a civil conspiracy must be to cause injury to another. In a civil action the conspiratorial agreement need not be in any particular form, and need not extend to all the details of the conspiratorial scheme. In general, the essential elements required to establish a civil conspiracy are that there must be: (1) two or more persons, and for this purpose a corporation is a person; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as the proximate result thereof. *Id.* Sec. 1 (2), p. 599.

Under the laws of Mississippi, it is an unlawful conspiracy if two or more persons conspire to prevent another from exercising a lawful trade or calling, *or doing any other lawful act*, by force, threats, or intimidation; to interfere or threaten to interfere with the property belonging to or used by another, or with the use or employment thereof; to permit any act injurious to public morals, trade or commerce; to violate the laws of this state through force, violence, threats, intimidation, or otherwise; or to accomplish any unlawful purpose, or a lawful purpose by unlawful means. Section 97-1-1, MCA 1972.

The law permits great latitude in the admission of circumstantial evidence tending to establish a conspiracy, and to connect those advising, encouraging, aiding, abetting, *and ratifying the overt acts* committed for the purpose of carrying into effect the object of the conspiracy. This court, as the trier of fact, must consider every fact in issue which will enable it to arrive at a satisfactory conclusion. Wagley v. Colonial Baking Company, et al., 208 Miss. 815, 45 So. 2d 717, 725 (1950); Southern Christian Leadership Conference, Inc., et al. v. A. G. Corporation (cited *supra;* see 241 So. 2d at page 625).

Where two or more persons conspire together, the conspiracy makes the wrongful act of each person the joint acts of them all. Southern Bus Lines, Inc. v. Amalgamated Association of Street, Electrical, Railway and Motor Coach Employees, et al., 205 Miss. 354, 38 So. 2d 765, 769 (1949); State ex rel Rice v. Hasson Grocery Co., 177 Miss. 204, 170 So. 234 (1936); Globe & Rutgers Fire Insurance Co. v. Firemen's Fund Insurance Co., et al., 97 Miss. 148, 52 So. 454 (1910). It follows that each act done in pursuance of the conspiracy by one of several conspirators is, in contemplation of the law, an act for which each is jointly and severally liable. This joint and several liability of a conspirator applies to damages ac-

cruing prior to his joining the conspiracy as well as damages thereafter resulting, regardless of whether he took a prominent or an inconspicuous part in the execution of the conspiracy. This liability of each member of a conspiracy for the damage resulting therefrom, exists whether or not the conspirator profited from the result of the conspiracy. 16 Am. Jur. 2d, Conspiracy, Section 48, pp. 151-152.

The malicious [8] interference by the defendants with the businesses of the complainants as shown by the evidence in this case is tortious *per se*, and this would be true even without the element of conspiracy. Memphis Steam Laundry-Cleaners, Inc. v. Lindsey, 192 Miss. 224, 5 So. 2d 227, 232 (1941). The motives and malice of Charles Evers, the Field Secretary of the NAACP in Mississippi, together with the plenipotentiary authority accorded the Mississippi contingents of that New York Corporation while they were engaged in carrying out the efforts of attempting to destroy the businesses of complainants, were the motives and malice of the NAACP itself.[9] The national NAACP was well-advised of Evers' actions, and it had the option of repudiating his acts or ratifying them. It never repudiated those acts, and therefore, it

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[8] This term is used here in the legal sense, and not necessarily in the ordinary sense. Malice in law has been defined as the intentional performance of an act harmful to another without just or lawful cause or excuse. Brown v. Guaranty Estates Corp., 239 N.C. 595, 80 S.E. 2d 645, 40 A.L.R. 2d 1094.

[9] Aaron E. Henry, a prominant black leader in the State of Mississippi, who was president of the Mississippi State Conference of the NAACP, president of the Coahoma County Branch of the NAACP, and a member of the Board of Directors of the national NAACP, testified that the NAACP "absolutely did not approve of the way the boycott was being conducted in Port Gibson." There is also evidence in the record tending to show that Evers was called to account by the national NAACP because of the manner in which the boycott was conducted. However, the NAACP took no action whatever to curb Evers' activities in this connection.

is deemed by this Court to have affirmed them. A case on all fours with this proposition is National Association For the Advancement of Colored People, et al. v. Haldred Overstreet, 384 U.S. 118, 86 S. Ct. 1306, 16 L. Ed. 2d 409, reh den 384 U.S. 981, 86 S. Ct. 1857, 16 L. Ed. 692 (1966), *quod vide.*

In 16 Am. Jur. 2d, Conspiracy, Section 47, p. 151, the general rule is stated that "(A) Corporation may be liable for damage to a third person resulting from a conspiracy among its directors or stockholders or a conspiracy of its agents with other persons or corporations. It is held, though, that a corporation cannot be a party to a conspiracy consisting of the corporation and the persons engaged in the management, direction, and control of the corporate affairs, where the individuals are acting only for the corporation and not for any personal purpose of their own . . ." Under this rule, the question has been raised as to whether or not Charles Evers, as an individual, could be deemed a conspirator, since, it is argued, he was acting only for the NAACP in instigating the boycott. In answering this question, this Court is of the opinion that clear and decidedly strong evidence shows that Evers acted not only for the NAACP but also for personal purposes of his own. But, *arguendo*, let it be supposed that at the time the boycott was commenced he (Evers) was, in fact, acting solely as an agent of the NAACP. The record shows that under adverse examination by counsel for complainants, Evers testified that he terminated his relation as Field Secretary of the NAACP in February or March, 1969. Nevertheless, the record clearly reveals that for quite some time *after* he terminated his position as Field Secretary of the NAACP, he was still very intensely engaged in the boycott against the white merchants of Claiborne County and Port Gibson, in his individual capacity. In fact, it was on Monday, April 21, 1969, that he called for an intensification of and a total and complete boycott

of all white-owned business establishments in Claiborne County, and warned a large audience of black people: "If we catch any of you going in any of them racist stores, we're gonna break your damn neck."

As to all of the other individual defendants named above, it is the opinion of the Court that they had no voice whatever in the management, direction, or control of the national NAACP, nor were they in any sense agents of that New York corporation. They were acting for personal purposes of their own, even though they may have been members of the local Claiborne NAACP. They, along with Evers as an individual, and along with MAP, were engaged in a conspiracy with the NAACP, and among themselves, to subject the white merchants of Port Gibson and Claiborne County to an illegal boycott.

SECONDARY BOYCOTT

The uncontradicted evidence introduced into the record established that defendants conducted a secondary boycott against complainants and other white merchants of Port Gibson and Claiborne County.

The Mississippi law recognizes two classes of boycotts, i. e., (1) primary and (2) secondary. Southern Christian Leadership Conference v. A. G. Corporation, *supra* (which will be referred to hereinafter as the SCLC Case). A primary boycott is a combination of two or more persons by concerted action to cease dealing either socially or in a business way with a person with whom the combination has a direct dispute. A secondary boycott is a combination, not merely to refrain from dealing with such person or to advise or by peaceful means persuade his customers to refrain, but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withdraw or withhold their patronage through fear of loss or damage to themselves.

Those acting in concert to bring about a secondary boycott are also engaged in a conspiracy. 15 A C.J.S., Conspiracy, Section 12, p. 631.

A common law primary boycott is a boycott applied directly and alone to the offending party by withdrawing from him all social and business relations on the part of the party initiating the boycott. Booker Kinnaird v. Louisville Board of Fire Underwriters, 188 Ky. 771, 224 S. W. 451, 21 A.L.R. 531.

A secondary boycott occurs when a combination directs pressure upon a neutral party to induce or coerce the neutral party to take action against, or cease doing business with, the person with whom the combination has a dispute. *The gravamen of the secondary boycott is that its sanctions press not upon the person with whom the combination has the primary dispute, but upon some third party who has no concern with the controversy.* National Woodworkers Manufacturing Association v. NLRB, 386 U. S. 612, 87 S. Ct. 1250, 18 L. Ed. 2d 357 (1967); Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO, v. NLRB, 366 U. S. 667, 81 S. Ct. 1285, 6 L. Ed. 2d 592 (1961); International Brotherhood of Electrical Workers, Local 501, et al. v. NLRB, 181 F 2d 34 (1950).

In order to protect unoffending, or neutral, parties from pressures in controversies not their own, the Mississippi Legislature enacted Section 97-23-85, MCA 1972 [10]. The intent of this statute is to prohibit action

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[10] Section 97-23-85. If two (2) or more persons conspire to prevent another person or other persons from trading or doing business with any merchant or other business and as a result of said conspiracy said persons induce or encourage any individual or individuals to cease doing business with any merchant or other person, and when such conspiracy is formed and effectuated because of a reasonable grievance of the conspirators over which the said merchant or place of business boycotted or against which a boycott is attempted has no direct control or no legal authority to

which is calculated to enlist the aid in a controversy of a person who is himself not engaged in the dispute. It has the effect of confining the action to the sphere of communication directly related to the dispute and banning any action which could be utilized to conscript, in a given struggle or controversy, a person who is not himself a party thereto.

Defendants contend that Section 97-23-85 is unconstitutional under the First and Fourteenth Amendments of the United States Constitution. This contention is without merit, for the reason that conduct and communication which are illegal are not protected by the constitutional provisions relating to freedom of speech. Giboney v. Empire Storage and Ice Co., 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 834 (1949). If the basic premise that secondary boycotts are unlawful under both United States and Mississippi law can be upheld, as it has been, then the provisions of Section 97-23-85 making activities of parties in furtherance of such boycotts illegal will not be invalid because freedom of speech and expression are thereby restricted. NLRB v. Wine L & D Union, (CA2, 1949) 584 F. 2d 584, 16 ALR 2d 762, 767-769 [11].

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correct, or when the conspiracy results from such alleged grievance against the merchant or other person boycotted when no notice of such grievance has been given the merchant or party boycotted and no reasonable opportunity to correct such alleged grievance has been given such merchant or other person against whom the conspiracy was formed, then each of such persons shall be guilty of the crime of unlawful restraint of trade and shall be fined not more than one thousand dollars ($1,000.00) or imprisoned for not more than two (2) years and in addition each such person shall be liable in civil action for any damages suffered by said merchant or place of business so wrongfully boycotted and also for attorney fees incurred by said merchant or person boycotted in a civil action to recover damages.

[11] Annotation 16 ALR 2d 769: Constitutionality and Construction of provision of Labor Management Relations Act (Taft-Hartley) making it unfair labor practice for labor organization to engage in secondary boycott.

Section 97-23-85 also takes into its purview the illegality of a primary boycott under the following circumstances:

> ". . . or when the conspiracy results from such alleged grievance against the merchant or other person boycotted *when no notice of such grievance has been given the merchant or party boycotted and no reasonable opportunity to correct such alleged grievance has been given such merchant or other person against whom the conspiracy was formed . . .*" (Emphasis added.)

This statutory language does not prevent articulation, conduct or communication growing out of a grievance, nor does it proscribe a primary boycott. It simply states that such a merchant or other party must have notice of the thing or circumstance giving rise to the grievance, so as to afford him the opportunity of escaping the dire and ruinous effects of a boycott through correcting the cause of the grievance. It is simple Hornbook law that a person has the right to pursue any valid calling, vocation or business without unreasonable hindrance. These things are property rights, and they also have the protective cloak of the Constitution placed around them. If the grievance is valid, and the merchant or other person does nothing by way of correction, then the statute in no sense bans a primary boycott.

In the SCLC Case, the Court found that the Appellants were, in fact, conducting a secondary boycott, since the appellee was ". . . in effect an innocent bystander who ultimately became the innocent victim of this struggle for political and economic power . . ." (See 241 So. 2d at page 624). But the appellants (defendants in the lower court) contended that they were also conducting a primary boycott, and that this somehow erased the principal purpose of the boycott and bestowed upon them a respectable aura of legality, just as the defendants in

the case *sub judice* have contended. In *SCLC* the defendants argued that they were only exercising rights vouchsafed them by the First and Fourteenth Amendments, just as the defendants in the case at bar have done. In *SCLC*, one of the assignments of error was (241 So. 2d at page 624):

> "The Court erred in holding that defendants had acted in concert against complainant for an unlawful purpose because:
>
> "a) Defendants' right *to boycott complainant* for the purpose of protesting *its racially discriminatory employment practices and other discriminatory treatment of Negroes* is protected by the First and Fourteenth Amendments to the United States Constitution;"

In response to this assignment of error, the Court said:

> But the truth of the matter was that *no complaint of any kind, oral or written, was ever made by any of these defendants or by any employee or any customer to the appellee, its officers or agents.*" (Emphasis supplied.)

In so saying, the Court upheld the premise that a grievance or demand must be made known to the person against whom a primary boycott is directed before such person's constitutionally vouchsafed property rights can be invaded by such a boycott. This is precisely the statutory rule that is laid down in Section 97-23-85 in this regard. This rule does not violate the right of primary boycott, and therefore is not violative of the First and Fourteenth Amendments. Rather, it upholds the right to legally engage in a primary boycott, but at the same time it protects the rights of the target of an intended boycott. In short, it does not prohibit freedom of speech, and at the same time it protects the property rights of the person against whom the proposed boycott is aimed

by affording him the opportunity of correcting the circumstances giving rise to the grievance so as to avoid the economically ruinous effects of a boycott.

As has been mentioned above, the defendants take the position that since two of their demands (i. e., No. 7 in the letter of March 14, 1966, and No. 4 in the letter of March 23, 1966 [12]) arose from grievances they had against the white-owned businesses, the boycott lost its "secondary" nature and became "primary." The Court, of necessity, resorted to cases involving labor disputes to ascertain the rule in this regard.

In International Brotherhood of Electrical Workers, Local 480, AFL-CIO v. National Labor Relations Board (CA DC, 1969), 413 F. 2d 1085, the question to be resolved was whether the union was engaging in a "primary activity" or a "secondary activity," since certain aspects of both procedures were present. The Court held that the N.L.R.B. had the duty in such cases of determining the *true objective*, and in so holding said (413 F. 2d at page 1089):

> "It has been well recognized that the prohibitions of Section 8(b)(4)(i) and (ii)(B)[13] cannot be interpreted literally; what is rather called for is fine line-drawing between primary and secondary activity. General Electric, supra [14]. Further, '(i)mportant as is the distinction between legitimate 'primary activity' and banned 'secondary activity,' it

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[12] These demand letters are copied in full hereinabove, *q.v.* It will be noted that these letters were not addressed to any of the complainants or any other white merchants of Claiborne County.

[13] National Labor Relations Act, Section 8(b)(4)(i, ii)(B) as amended 29 U.S.C.A. 158(b)(4)(i, ii)(B).

[14] This refers to Local 761, International Union of Electrical Workers v. N.L.R.B., 366 U.S. 667, 677, 81 S. Ct. 1285, 6 L. Ed. 2d 592 (1961).

does not present a glaringly bright line.' *Id.*, 366 U.S. at 673, 81 S. Ct. at 1289. The Supreme Court, and this court, have made clear that the key factor is the *objective* of the union activity, whether it is aimed at the primary employer or whether it is *also aimed at pressuring the secondary employer. . .*" (Emphasis added.)

* * * *

"Although the union picketing appeared to square with the *Moore Drydock* [15] requirements, *the Board was correct in finding from external evidence that the picketing had the unlawful secondary object of coercing neutral employers . . .*" (Emphasis added.)

See also Gulf Coast Building & Supply Company, Inc. v. International Brotherhood of Electrical Workers, Local No. 480, AFL-CIO, (CA5, 1970), 428 F. 2d 121, wherein the Court discussed the rule relative to the distinction between a legitimate *primary object* and an illegal *secondary boycott* in these words (423 F. 2d at page 124):

"If Local 480's sole object was to force Gulf Electric to pay area standards and its actions were not intended to pressure neutral employers such as Gulf Coast to cease doing business with Gulf Electric *and were reasonably limited to accomplish its primary object*, then Local 480's actions did not constitute a secondary boycott. *If, however, Local 480 did have the purpose of forcing Gulf Coast to sever its ties with Gulf Electric, and its picketing was designed to accomplish that purpose, its actions amounted to a secondary boycott* in violation of (the)

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[15] Sailors Union of the Pacific (Moore Drydock), 92 N.L.R.B. 547 (1950). In *Moore Drydock* the Board set out four standards for picketing in (common situs) situations which would be *presumptive* valid primary activity.

National Labor Relations Act . . ." (Emphasis added.)

The testimony in the case at bar clearly shows that the principal objective of the boycott was to force the white merchants of Port Gibson and Claiborne County to bring pressure upon governing authorities to grant defendants' demands or, in the alternative, to suffer economic ruin. The two grievances aimed directly at the complaints [16] notwithstanding, the key factor in making this determination is the *objective* of the boycott. In applying the criteria employed by the United States Courts of Appeals for the Fifth Circuit and for the District of Columbia, *supra*, and, indeed, by the United States Supreme Court, this Court must conclude that defendants were carrying out an illegal secondary boycott.

Aside from what has been found and set out above, the Court is of the opinion that perhaps the most important aspect of this case in making a determination of whether the boycott was legal or illegal concerns the employment of tactics designed to keep the black people of Claiborne County out of the white-owned businesses through the use of threats, intimidation, abusive language, ridicule, coercion and, in some cases, outright violence. There is no need to reiterate these incidents

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[16] There is no evidence in the record clearly establishing that the defendants made any demands whatever directly on complainants in this regard. The letters were not addressed to any of the complainants, and except possibly through general rumors throughout the community and newspaper articles in this connection, they were never placed on notice. Moreover, the record shows that several of the complainants were kept under boycott even after they employed blacks in their businesses. After the Roosevelt Jackson incident, the boycott was imposed on *all white merchants* to force them to cause the governing authorities to discharge Wolf and McQuein, regardless of whether they employed black people.

here. Suffice it to say that the means used in this connection were highly successful and, unquestionably, brought about the ends that defendants set about to achieve. Fear and apprehension were powerful deterrents.

In the SCLC Case, Justice Robertson, speaking for the Court, very aptly said (241 So. 2d at page 625):

> "'*When any individual or organization under whatsoever name attempts to use force to gain his or her ends, they are attempting to usurp a governmental function. When a picket line becomes a picket fence, it is time for the government to act.* Carnegie-Illinois Steel Corporation v. United Steelworkers of America, 353 Pa. 420, 45 A. 2d 857.' (Southern Bus Lines, Inc. v. Amalgamated Ass'n., etc.), 205 Miss. at 374 and 376, 38 So. 2d at 768 and 769.
>
> "The Fourteenth Amendment to the United States Constitution, among other things, specifically provides: '* * * nor shall *any State deprive any person of* life, liberty, or *property, without due process of law* * * *.'
>
> "Surely this prohibition should apply with equal or greater force to private persons or organizations.
>
> "In condemning a conspiracy of private persons to destroy the business and livelihood of another, we said, in *Southern Bus Lines, Inc.*, supra:
>
> > "'*Private persons cannot conspire to illegally destroy the business of another, and where two or more persons conspire together, the conspiracy makes the wrongful acts of each the joint acts of all of them.* Globe & Rutgers Fire Ins. Co. v. Firemen's Fund Ins. Co. et al., 97 Miss. 148, 52 So. 454, 29 L.R.A., N.S., 869; State ex rel. Rice v. Hasson Grocery Co., 177 Miss. 204, 170

So. 234, 107 A.L.R. 663.' 205 Miss. at 375, 38 So. 2d at 769."

Accordingly, since an illegal boycott is an invasion of a property right, the members of the boycotting combination are liable for the resulting damages. This was an unlawful boycott. The fact that the claimed ultimate purpose of the boycott was to advance the interests of the combination does not cleanse it of its unlawful character. The direct and overriding purpose was to injure and destroy the businesses of the complainants; and the fact that it is contended that the boycott was designed as a means to an end, and the end in itself might be considered lawful, does not render the boycott in this case lawful.

RESTRAINT OF TRADE

The evidence in the record reveals that the defendants sought to restrain and eliminate all trade between the white merchants in Claiborne County and their black customers, and to direct black trade to black stores in the county or, in the alternative, to merchants out of Claiborne County.[17] The combination forged by the defendants unreasonably limited competition between the black merchants and the white merchants of the county, which had theretofore traditionally existed. The suppression of the competition between black and white merchants necessarily restrained commerce.

The purpose of this state's restraint of trade laws is to secure equality of opportunity. This purpose was thwarted when the group power of the NAACP, MAP and the individual defendants was utilized to eliminate the white merchants as competitors of the black mer-

[17] This was specifically required by MAP in cases where the necessary commodities for its Head Start units could not be obtained from black-owned stores in Claiborne County.

chants. In order to establish a violation of Mississippi law, it is not necessary for complainants to show that the combination arranged by defendants suppressed all competition between black and white merchants. The interest of the public in the preservation of competition is the primary consideration.

As a legal principle, it is sufficient to show that the concert of action on the part of the defendants was deliberately invited, and that the defendants gave their adherence to the scheme and participated in it. Retail Lumber Dealers Association v. State ex rel. Attorney General, 95 Miss. 337, 48 So. 1021, 1023 (1909); Standard Oil Co. of Ky. v. State ex rel. Attorney General, 104 Miss. 886, 61 So. 981 (1913); Grenada Lumber Co. et al. v. State ex rel. Attorney General, 98 Miss. 536, 54 So. 8 (1911).

Section 75-21-1, et seq., MCA 1972, declares that combinations or agreements between two or more persons, corporations or associations, the effect of which is to create or attempt to create monopolies or restraints of trade and commerce in the State, are inimical to the public welfare and are unlawful.

As has been stated hereinabove, the defendants conspired to, and did, engage in an unlawful boycott of complainants' businesses. It follows that the combination of the defendants and the agreements and understandings between the NAACP, MAP and the individual defendants, as revealed in the record in this case, are within the express prohibitions of the Mississippi statutes relating to restraints of trade. Under the laws of this state, any private person or corporation may sue for damages of every kind growing out of such restraints of

trade, and in addition may recover a penalty of $500.00 in each instance of injury.[18]

The NAACP, a nonresident corporation, was a party to the combination, agreement and understanding of defendants. The NAACP was a party to the unlawful boycott. Under the laws of Mississippi relative to attachments in chancery, the funds of the NAACP in the hands of attachment defendants within this state are subject to attachment.[19]

After a careful consideration of the constitutional claims of defendants, the Court finds that none of the acts or conduct of defendants was shielded or protected

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[18] Section 75-21-9, MCA 1972:

"Private persons and corporations may sue.

Any person, natural or artificial, injured or damaged by a trust and combine as herein defined, or by its effects direct or indirect, may recover all damages of every kind sustained by him or it and in addition a penalty of five hundred dollars ($500.00), by suit in any court of competent jurisdiction. Said suit may be brought against one or more of the parties to the trust or combine and one or more of the officers and representatives of any corporation a party to the same, or one or more of either. Such penalty may be recovered in each instance of injury. All recoveries herein provided for may be sued for in one suit."

[19] Section 11-31-1, MCA 1972:

"The chancery court shall have jurisdiction of attachment suits based upon demands founded upon any indebtedness, whether the same be legal or equitable, or for the recovery of damages for the breach of any contract, express or implied, or arising ex delicto against any nonresident, absent or absconding debtor, who has lands and tenements within this state, or against any such debtor and persons in this state who have in their hands effects of, or are indebted to, such nonresident, absent or absconding debtor. The court shall give a decree in personam against such nonresident, absent or absconding debtor if summons has been personally served upon him, or if he has entered an appearance."

by the Constitution of the United States or the Constitution of the State of Mississippi.

Moreover, the Court finds that Sections 11-31-1 through 11-31-11, MCA 1972 (attachments in chancery), Sections 75-21-1 through 75-21-39, MCA 1972 (trusts and combines in restraint or hindrance of trade), and Section 97-23-85 (unlawful restraint of trade—boycott) are all constitutional as written and as applied in this case.

The Court finds that, as a matter of law, the defendants were not entitled to a jury trial in the chancery court. This is a court of equity; this suit came within the exclusive jurisdiction of this court through the injunctive process and through the complainants' prayer for an attachment in chancery. It was incumbent upon this court to hear the case in full once jurisdiction was assumed. To have heard the portions of this matter sounding in equity, only, and to have transferred the questions of tort liability and damages to the circuit court would have been contrary to the maxim "equity delights to do complete justice, and not by halves." Although this court has the power to empanel a jury,[20] nevertheless the granting of a jury trial by the chancery court is not a matter of right, but is wholly discretionary with the chancellor; and, moreover, the verdict of a jury in chancery is purely advisory and the chancellor may entirely disregard it. Submission of an equity case to a jury is seldom allowed or desired; and, even in cases where this is done, the action of the chancellor with reference to a jury and to the issues before the jury cannot be reviewed; upon appeal the question is whether upon the record the degree is correct irrespective of the jury, in the same manner as if no jury had been present. Griffith, Mississippi Chancery Practice, 2d Ed., Sec. 597, p. 634. See also State v. Marshall, 100 Miss. 646, 56 So.

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[20] Section 11-5-3, MCA 1972.

792 (1911); Bland v. Bland, 105 Miss. 483, 62 So. 641 (1913); First State Bank v. Lincoln, 97 Miss. 726, 53 So. 387 (1910); Griffin v. Jones, 170 Miss. 230, 234, 154 So. 551 (1934). The general rule is set out in 47 Am. Jur. 2d, Jury, Section 32, pp. 650-652. No defendant was deprived of any legal right or constitutional right by reason of the fact that this equity action was heard without a jury.

DAMAGES AND PENALTIES

The complainants proved, in this record, that they suffered injury to to their respective businesses as the direct and proximate result of the unlawful secondary boycott [21] and the defendants' actions in unlawfully restraining trade, all of which was accomplished by defendants through a conspiracy. Damages, of course, are the pecuniary consequences which the law imposes for a breach of some duty on the part of the defendants or the violation of some right of the complainants. 22 Am. Jur. 2d, Damages, Sec. 1, p. 13. And for the wrongful injuries inflicted on the complainants by the defendants, the complainants are entitled, as a matter of law, to be made whole and receive full compensation. Cook Industries, Inc. v. Carlson (Miss. 1971), 344 F. Supp. 809, 816-819.

The causation of the injury and damage to the complainants has been sufficiently established by the evidence, and the complainants have established by the evidence in the record that the illegal conduct of the defendants was the factor causing the injuries inflicted on the respective businesses of the complainants. The complainants have proved, not only by a preponderance of the evidence, but also clearly, concisely and convincingly, the

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[21] Regardless of whether the boycott was primary or secondary, any kind of boycott is unlawful if executed with force or violence or threats; and a conspiracy to that end is likewise unlawful. SCLC Case, *supra*, and authorities cited therein.

four important elements of their case, viz.: (1) the breach of a duty by the defendants, (2) the violation of complainants' rights, (3) causation of injury, and (4) the amount of damages suffered.

The method used to determine the amount of damages suffered by twelve of the businesses [22] is set out in detail in the record. The remaining complainants presented no evidence as to their business losses. It is the considered opinion and finding of the Court that the method employed by the twelve businesses to establish their damages was the most reasonable basis for the computation of their losses, and included the best evidence which was obtainable under the circumstances of the case. The complainants' evidence as to damages was not eroded by evidence offered by defendants.

The highly detailed financial data used by the three certified public accountants who testified for complainants were derived from: (1) federal forms 1065 (partnerships), (2) federal forms 1040, Schedule C (individual profit and loss), (3) federal forms 1120 (corporations), and (4) State of Mississippi forms ST-4 (sales tax). The accountants testified that after carefully studying alternative methods available to them to measure the performances of the twelve businesses, they concluded that the tax returns, which were accepted by both the federal and state authorities, were the most feasible data under the circumstances. The complainants involved in the said businesses testified that these tax returns were true and correct. In order to avoid distortion of the measurement of actual business performance, the ac-

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[22] These twelve businesses consist of three corporations, five sole proprietorships, and four partnerships. The partnerships, in aggregate, consist of nine of the complainants. In accord with the method employed by expert witnesses to compute losses, each of these businesses is treated as an entity although they involve seventeen of the complainants.

countants did not use items of non-operating income or expenses, such as rental income, loss on sale of fixed assets, etc.

In compiling the financial data, the accountants used a 13-year span from January 1, 1960, through December 31, 1972. This time span afforded a broad base for comparative purposes. The Court is of the opinion that the manner of presenting the financial data was in all respects proper and in accordance with generally accepted accounting principles.

The gross rather than net sales for the years 1960-1972, inclusive, were submitted to an expert professional economist and consultant. These gross sales figures measured the volume of sales, and thus the volume of trade. Net income figures were later used by the accountants in converting volume losses to income losses. The expert economist used the financial data supplied by the accountants to prepare an economic impact study.

The economics expert testified that the use of economic analysis is a widely accepted and respected tool for determining monetary losses or damages. (Although defendants had their own economist in the courtroom during complainants' testimony as to damages, they did not refute the testimony given by complainants' expert witnesses). Economic statistical analysis consists of a set of analytical methods, chiefly mathematical, for collecting, evaluating, interpreting and making forecasts from known data. The use of statistical analysis has become widespread in business and economics, and its validity within predictable parameters is accepted in scientific circles. The economist testified that with respect to the cases of the twelve businesses recognized statistical techniques were employed to evaluate the impact of the economic trauma of the boycott on these retail establishments and to determine the amounts of sales lost by these firms as a result of the actions of the defendants.

Actual sales for the years 1960-1965 were used by the economist for establishing a past trend. He testified that he used a technique in statistics known as "linear regression" or "line of regression" to establish a trend line of sales for the period 1960-1972, inclusive. He employed a mathematical method called "least squares," which in the field of economics is an accepted and widely-used technique of fitting a curve to data; it is the most popular method of computing the trend of a time series.

He testified that the method of "least squares" gives the most satisfactory measurement of the trend of a series in the circumstances of the twelve businesses, and it afforded the most satisfactory and impersonal method of making the calculations.

The percentages of net earnings to gross sales were computed for the six-year period 1960-1965, inclusive, and averaged in order to determine the means of converting lost sales into lost earnings for the period 1966-1972, inclusive. The percentages arrived at represented the average earnings which resulted from sales during the span of normal years, i. e., those years free from the influence of the boycott. The period gives a broad base for accurate measurement of earnings and is in accord with accepted accounting standards.

After determining earnings lost for a specific year, it was also necessary to compute a loss of interest on monies which would have been available to each business. Since monies were lost to each of the twelve businesses, these monies were not available for investment, and thus a loss of return or interest on investment resulted. The interest rate used by complainants's [sic] expert witnesses was 5% annually computed from the end of the loss year forward to December 31, 1972. The Court is of the opinion that the method of computing interest was proper. The rate applied was reasonable and, if anything, somewhat conservative. The evidence

established that it was an average of the prevailing available interest rates from banks and savings and loan institutions for the years 1967-1672 [sic].

The complainants introduced evidence of the loss of good will by some of the business establishments. The certified public accountants testified that good will is an intangible asset which exists when the actual or expected earnings produced by the assets of a business (exclusive of good will) are in excess of a normal return. Good will is generated by any factors which cause attractive earnings results, such as satisfactory customer and employee relationships, location of the business and "know how."

Complainants' expert witnesses testified that there are recognized and accepted methods for the computation of good will. In making the computation of the loss of good will, relative to the twelve businesses, these expert witnesses testified that they utilized the "capitalization of excess earnings" method. This method, in the opinion of these witnesses, is considered the theoretically soundest approach by standard accounting texts and has been established by the Internal Revenue Service as its accepted guideline in Revenue Ruling 68-609. The Revenue Ruling reinforces the accounting and economics concept, testified to by complainants' expert witnesses, which was not contradicted by defendants, that all earnings are a return on assets utilized by a business. The assets may be tangibles such as cash, land, buildings or the intangible good will. Although the expected rate of return on the two major divisions of assets will undoubtedly vary according to the type of business, an 8% return on tangible assets and a 15% return on the intangible asset of good will are used by the Internal Revenue Service in cases of businesses with small risk factors and stable regular earnings, the category into which the retail businesses of complainants would fall. The computations of the loss of the good will asset was made as of December

31, 1972, and was based on the earnings as of that date. The Court considers this appropriate and reasonable because the evaluation was made on the current degree of recovery from loss prior to that date. The Court is of the opinion, based on the reasonable, persuasive and uncontradicted evidence in the record, that the loss of earnings suffered by the twelve businesses was the result of the external influence exerted on customer relations by the unlawful boycott employed by the defendants against the white merchants of Claiborne County. Thus, it is inescapable that the resulting loss of the value of the respective twelve businesses, due to destroyed customer relations, is a loss of good will. Applying the 15% capitalization rate of the twelve businesses in the year prior to the valuation date of December 31, 1972, would produce a reasonably accurate figure of lost good will.

This Court, as the fact finder in this case, has the task and responsibility of judging the credibility of the witnesses, resolving the conflicting evidence, if any, and assessing the weight of the testimony. The Court finds that the expert witnesses introduced by the complainants properly rested their testimony, with references to causation of the losses suffered by the twelve businesses, on the fact of the boycott conducted by the defendants against the white merchants of Claiborne County. The Court has heretofore made its finding that the boycott and the effect of this economic trauma on the twelve businesses is not challenged by the evidence in the record. The position of the defendants is simply that the boycott did in fact cause business losses, as it was intended to do. Thus, causation is admitted. Defendants base their defense on the concept that the right to boycott and inflict losses on complainants was a legally protected right afforded them under the laws and Constitution of the United States. This Court has hereinbefore found that the conduct of the defendants was unlawful and unprotected.

The defendants produced no evidentiary facts during the exceedingly lengthy trial which would establish any factor, other than their actions, to account for the *cause* of the losses suffered by the twelve businesses. The evidence establishes that the actions of the defendants was the sole proximate cause of the injuries to complainants.

Although the burden on the complainants of establishing the amount of damages is less strict than the burden of proving the fact of damages and causation, evidence submitted by the complainants as to the methods used to compute the amount of damages in this case is of a high degree of certainty. The defendants produced no credible or creditable evidence to contradict the accuracy of those methods, nor did they attempt any computation on their own. The Court, accordingly, must conclude that the evidence in the record, as testified by complainants' expert witnesses, relating to the losses of the twelve businesses, is reasonable and proper. The Court is of the opinion that the complainants involved, respectively, in the twelve said businesses should recover the actual damages proved by the methods utilized.

The complainants contend that in addition to actual damages they have the right to recover, as to the respective businesses, a statutory penalty of $500.00 *from each defendant* under the provisions of Section 75-21-9, MCA 1972[23]. It is apparent that complainants construe the following language of that statute:

> ". . . all damages of every kind sustained by him or it and in addition a penalty of five hundred dollars ($500.00), by suit in any court of competent jurisdiction. Said suit may be brought against one or more of the parties to the trust or combine and one or more of the officers and representatives of any corporation a party to the same, or one or more

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[23] This statute is set out in full in footnote 18, p. [55b], *supra*.

> of either. Such penalty may be recovered in each instance of injury . . ."

to mean that each of the 134 defendants is liable on this statutory penalty to each of the twelve businesses proving actual damages, as well as to five of the businesses that failed to prove any damages whatever but which were, nevertheless, placed under the boycott. As a consequence of this construction of the statute by complainants, they contend that each of seventeen businesses is due the sum of $67,000.00 in statutory penalties, aggregating the sum of $1,139,000.00.

This contention is without merit. The statute to be applied here limits the penalty to those complainants, and only those complainants, who have been ". . . injured or damaged by a trust and combine as herein defined . . ." It follows of course that unless the claimed injury or damage is shown by competent evidence, no statutory penalty ". . . in addition (thereto) . . ." can be assessed under the statute. Since the five businesses here in question have not been found by the court to have suffered any injury or damage, no sum in statutory penalty is due them.

Moreover, this Court is of the opinion that the statute clearly should be construed to mean that a penalty of $500.00 is to be assessed against the offending trust, combine or conspiracy, and *not* against each person making up the trust, combine or conspiracy. Counsel for complainants cite as authority in support of complainants' position the case of Delmas v. Pascagoula St. Ry. & Power Co., 103 Miss. 235, 60 So. 210 (1912). That case involved the construction of Section 5007, Miss. Code 1906, which contains language closely paralleling Section 75-21-9, MCA 1972, insofar as providing a penalty in the sum of $500.00 to be recovered by one damaged by a combine, in addition to actual damages, is concerned. But a close reading of that case shows that it militates

directly against complainants' contention, in these words (60 So. at page 211):

> ". . . It seems clear from a careful reading of the section that the injured party is given the right of action against the person violating the provisions of the chapter for all actual damages sustained, *and, in addition thereto, that he can recover the sum of five hundred dollars . . .*" (Emphasis added.)

It is true that the Delmas Case was based on a point not involved in the case at bar, in that it entailed a claim for the sum of $500.00 in penalties for each day the trust or combine was in violation of law, which the Court held was without merit. But it will be noted that the Court did not extend the penalty against each person engaged in any such violation; it simply said with finality that in addition to actual damages the injured party ". . . *can recover the sum of five hundred dollars . . .*" (Emphasis added.)

The Court concludes, in ruling on complainants' contention in this connection, that only the twelve businesses proving actual damages come within the purview of the penalty provided in Section 75-21-9, MCA 1972, and that each of those businesses may recover the sum, and only the sum, of $500.00 as a penalty.

The Court finds that the following named complainants are entitled as a matter of law to the recovery of actual damages and penalties from the defendants hereinabove named, jointly and severally, in the following amounts:

Complainants	Actual Damages	Penalties	Total
Claiborne Hardware Co., Inc.	$ 14,187	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a/ McDaniel Pharmacy	165,551	500	166,051
James E. Hudson & George Hudson, d/b/a Hudson Brothers Piggly-Wiggly Store	215,197	500	215,697
Waddy Abraham, d/b/a Jitney Jungle	141,717	500	142,217
Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store	34,141	500	34,641
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	153,316	500	153,816
Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria	92,413	500	92,913
Port Gibson Lumber & Supply Company, Inc.	3,350	500	3,850
W. H. Hay, d/b/a O.K. Cleaners & Shirt Laundry	82,580	500	83,080
Charles R. Dobbs d/b/a Western Auto Associate Store	16,853	500	17,353
Allen Motor Co., Inc.	3,307	500	3,807
Mrs. Edgar A. McCaa, d/b/a Town & Country	22,087	500	22,587
TOTALS	$944,699	$6,000	$950,699

This Court finds that no injuries or damages were proved by the other complainants herein, and that they shall take nothing, they being the following, viz.: H. B. Hudson, Jr., d/b/a Hudson's Gift Shop; Louis N. Ellis, as Executor of the Will and Estate of Michael Ellis, de-

ceased; Louis N. Ellis, d/b/a Abe's Betty Jean & Port Gibson Trading Co.; H. D. Harwell, d/b/a Mack's Package Store; Kelly D. Conn, d/b/a Auto-Lec Associate Store No. 225; A & P Service & Parts, Inc.; Donald Segrest Ford, Inc.; and the Intervenor Harold J. Barkley, Jr., as Trustee in Bankruptcy in the matter of Radford S. Jones, d/b/a Jones' Five 'n' Ten Store, bankrupt.[24]

The Court finds that the cross-bills herein filed by the NAACP and the individual defendants should be dismissed. Cross complainants wholly failed to meet the burden of proving the allegations set out therein.

Section 97-23-85,[25] MCA 1972, provides that each person defendant shall be liable for attorney fees incurred by the merchants or other person boycotted in cases such as the case at bar. The Court finds that the seventeen complainants hereinabove named, who sustained injuries by the concerted acts of the defendants, and who are hereinabove found to be due damages in the sums set forth, are entitled to be awarded attorney fees. The Court, having maturely considered the extremely complex nature of this case, the time and effort necessary in trial preparation, the framing of pleadings, the defenses necessary in federal court proceedings, and the extremely long trial in this court, is of the opinion that attorney fees in the amount of $300,000 are reasonable and proper.

All costs herein incurred shall be taxed against defendants. The actual damages and penalties awarded the seventeen complainants above named, in the sum of $950,699, together with attorney fees in the sum of $300,-

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[24] This list includes the five complainants who were denied recovery of penalties under Section 75-21-9, MCA 1972, for the reason that no actual injuries or damages as to them were shown by the evidence.

[25] See footnote 10, p. 55.

000, aggregating the sum of $1,250,699, shall be the joint and several liability of the defendants hereinabove named, and said sum shall bear interest at the legal rate from and after the date of rendition of the final decree herein.

OTHER RELIEF

The Court finds that the complainants are entitled to a permanent injunction, enjoining and prohibiting the defendants and all persons confederating with them from:

1. Stationing guards, store watchers, enforcers, deacons, or black hats, or by whatever name such persons are called, at or near the business premises of the complainants.

2. Persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the complainants.

3. Blocking the streets and sidewalks near the business establishment of any complainant or obstructing the entrance to the place of business of any complainant.

4. Using physical violence against any person; inflicting damage to any real or personal property of any person; or using demeaning and obscene language to or about any person; by reason of such person continuing to patronize or trade with any of the complainants or other persons.

5. Combining or colluding to interfere with the business of another person or for the purpose of restraining or monopolizing trade and commerce.

6. Picketing or patroling the premises of any complainant for the reason that the Court finds that the picketing is to attain an object which is in violation of the public policy of Mississippi, and has been conducted against a background of violence.

The funds attached by the writs of attachment in chancery in the hands and under the control of the named resident banks who answered and reported funds, are declared to be the funds of the nonresident NAACP. Such funds are to be paid to the complainants and applied toward the payment of damages and penalties due the complainants as determined in this opinion.

Counsel for the complainants will prepare a proposed final decree in accordance with the findings and conclusions of this opinion within 10 days from the date hereof. A copy of the proposed final decree will be submitted to counsel for the defendants at the same time the proposed final decree is presented to the Court.

DATED: August 9, 1976.

/s/ Geo. Wm. Haynes
Chancellor

APPENDIX C

MINUTES

SUPREME COURT OF MISSISSIPPI
September Term, 1980

No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*

v.

CLAIBORNE HARDWARE COMPANY, *et al.*

WEDNESDAY, DECEMBER 10, 1980,
COURT SITTING:

This cause having been submitted at a former Term of this Court on the record herein from the Chancery Court of Hinds County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order, adjudge and decree that the Decree of said Chancery Court rendered in this cause on the 19th day of August 1976—be and the same is hereby affirmed in part and reversed and rendered in part on liability, all as set out in the opinion of this Court and Judgment is rendered here for those defendants below who are listed on page 23 of the opinion of this Court; reversed and rendered in part on damages, all as set out on pages 24 and 25 of the opinion of this Court; reversed and remanded in part on damages, all as set out in the opinion of this Court. It is further ordered, adjudged and decreed that the appellees do pay all of the costs of this appeal to be taxed for which let proper process issue.

ORDERED: THAT THE COURT DO NOW ADJOURN UNTIL THURSDAY, DECEMBER 11, 1980 AT 9:30 A.M.

/s/ L. A. Smith
L. A. SMITH, JR.
Presiding Justice

APPENDIX D

SUPREME COURT OF MISSISSIPPI

ROBERT E. WOMACK, CLERK
Third Floor, Gartin Building
P.O. Box 117
Jackson, Mississippi 39205

December 19, 1980

Yvonne P. Burnham,
Deputy Clerk

Telephone
601/354-6014

Hon. Chris J. Walker
Upshaw & Ladner
Attorneys at Law
1675 Lakeland Dr.
407 Riverhill Tower
Jackson, MS 39216

RE: National Association for the Advancement of Colored People, et al

v.

Claiborne Hardware Co., et al, #51,488

Dear Mr. Walker:

This is to advise you that the Court has granted your motion for time to file a petition for rehearing in the above styled case.

Your petition for rehearing will be due on or before January 24, 1981.

Sincerely yours,

/s/ Robert E. Womack/djh
ROBERT E. WOMACK
Supreme Court Clerk

djh
c: Hon. A. Spencer Gilbert, III
Hon. Alix H. Sanders
Hon. Frank Parker
Messrs. Royals, Taylor & Epps
Hon. Dixon L. Pyles
Hon. W. E. Gore
Messrs. Shell, Buford, Bufkin, Callicutt & Perry
Hon. Charles E. Carter
Hon. Nathaniel Jones
Hon. William R. Richardson, Jr.
Hon. Arthur M. Weisburd
Hon. Lloyd M. Cutler
Hon. James Robertson
Hon. John Payton
Messrs. Banks & Nichols

APPENDIX E

IN THE SUPREME COURT OF MISSISSIPPI
DECISIONS HANDED DOWN MARCH 4, 1981

(Continued—Page 3)

[No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,

v.

CLAIBORNE HARDWARE COMPANY, *et al.*]

THE COURT SITTING EN BANC:

51,488 National Association for the Advancement of Colored People, et al. v. Claiborne Hardware Co., et al.; Chancery, Hinds; Appellants' Petition for Rehearing Denied; Appellants' Motion to Strike Exhibits A and B to Appellees' Petition for Rehearing Denied; Appellees' Petition for Rehearing Denied.

APPENDIX F

SUPREME COURT OF THE UNITED STATES

No. A-963

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners

v.

CLAIBORNE HARDWARE COMPANY, *et al.*

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 1, 1981.

/s/ Lewis F. Powell, Jr.
Associate Justice of the
Supreme Court of the
United States

Dated this 23rd day of May, 1981.

APPENDIX G

CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 78,353

CLAIBORNE HARDWARE COMPANY, *et al.*
Complainants

VS.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*
Defendants

[Filed Aug. 19, 1976]

FINAL DECREE

The above entitled and numbered equity action was heard on the bill of complaint, the pleadings and answers of the defendants, and oral and documentary evidence. The Court has studied and considered the voluminous and exhaustive briefs on the factual and legal issues together with the oral arguments of the counsel for the parties. Thus, having been fully advised in the premises, and having maturely considered all of the factual and legal issues, this Court rendered "The Opinion of the Court" on August 9, 1976. It is made a part of and by reference incorporated into this final decree. On August 12, 1976, the Court signed an order for the entry of a final decree in vacation. The matters included in this "Final Decree" are those which have been extracted and condensed from the fuller discussion in the written opinion.

The Court has in personam jurisdiction of the parties and jurisdiction of the subject matter.

The complainants more than amply met the burden of proof and established by an overwhelming preponderance of the evidence that the defendants, named hereinafter, wrongfully combined and colluded in a civil conspiracy, engaged in an unlawful secondary boycott against complainants, illegally created a monopoly, unlawfully interfered with the business relations of the complainants, and unlawfully conspired to and did destroy and damage the businesses of complainants. The named defendants are jointly and severally liable to the twelve complainants, hereinafter set forth, in damages and penalties. The defendants jointly and severally liable to the complainants are:

1. National Association for the Advancement of Colored People;
2. Mississippi Action for Progress, Inc.;
3. Ferd Allen;
4. Henry Anderson;
5. Alonzo Atlas;
6. Beatrice Atlas;
7. Calvin Bailey;
8. James Bailey;
9. McLawrence Bailey;
10. Joseph M. Barber;
11. Kenneth C. Barber;
12. Bill Beasely;
13. Helen Beasley;
14. Calvin Blackburn;
15. Marjorie W. Brandon;
16. Eli Brooks;
17. Priscilla Brooks;
18. Janie Brown;
19. Tullos Brown;
20. Eddie Burrell;
21. James Burrell;
22. Robert Butler, Jr.;
23. Arthur Lee Camphor;

24. Irma Rae Camphor;
25. W. E. Camphor;
26. Maggie Clark;
27. Alberta Coleman;
28. Charles Collier;
29. James Collier;
30. Alexander Collins;
31. Geneva Collins;
32. Thelma Crowder;
33. Dan Currie (a/k/a Dan Curry);
34. Sarah Jane Currie (a/k/a Curry);
35. Charles Davis;
36. Mack Louis Davis;
37. Mary Ella Dee;
38. James Devoaual;
39. Alex Dorsey;
40. Sally Dorsey;
41. Geneva Durham;
42. Johnny Durham;
43. Mary Durham;
44. John Eggleston;
45. Harvey Ellis;
46. Jim Ellis, Jr.;
47. John Ellis
48. Katie Ellis;
49. Rachael Ellis;
50. Charles Evers;
51. Ethel Graise;
52. James Gray;
53. Walter L. Griffin, Sr.;
54. Bernard Gusta;
55. Leesco Gusta (Guster);
56. Charlie Harris;
57. Cline Harvey;
58. Jim Holt;
59. Albert Jackson;
60. Willie Jackson;

61. Mrs. E. J. Jennings;
62. Jesse Johnson;
63. Roscoe Johnson;
64. Julia Coleman Jones;
65. Lela Jones;
66. Marcus Jones
67. Nathaniel H. Jones;
68. Samuel Jones, Jr.;
69. Bobby Kelly;
70. Bernice Lee;
71. Edward Lee;
72. Margaret Liggan (Liggins);
73. Clarence Lucas;
74. Julia Lucas;
75. Nathaniel Martin;
76. Leander Monroe;
77. Johnny Moore;
78. Mary Lee Moore;
79. Willie V. Moore;
80. Ellis Neal;
81. Bessie Newman;
82. D. A. Newman;
83. Amos Newsome, Jr,;
84. James Odom;
85. Leona Owens;
86. Roosevelt Owens;
87. William Owens;
88. Henry Patton, Jr.;
89. Henry Otis Preston;
90. Evan Roberson;
91. Viola Robinson;
92. William (Willie) Robinson;
93. Mary Ross;
94. Odessa Ross;
95. William M. Matt Ross;
96. Elmo Scott;
97. Rudolph Shields;

98. Oliver Shinall;
99. Dora Shorter;
100. Roman Shorter;
101. Rosa Shorter;
102. Annie B. Smith;
103. Bilbo Smith;
104. Delores Smith;
105. Leon Tarleton;
106. Ira Thomas;
107. Carl Thompson, Jr.;
108. Marguerite Thompson;
109. (Rev.) Mack Tisdale
110. George Henry Walker;
111. Thelma K. Walker;
112. Eddie Walls, Jr.;
113. Lessie May Walls;
114. Alex Warner;
115. Alonzo Warner;
116. Ethel Warner;
117. Albert Weathers;
118. Bome Wells;
119. Carl Lee Wells;
120. Eddie Lee Wells;
121. Katie Wells;
122. James Whitney;
123. Calvin Williams;
124. Ernestine Williams;
125. Aaron Wilson;
126. Gussie Pearl Wilson;
127. (Rev.) Willie Wilson;
128. Early Wren;
129. Ruby Wren;
130. Arthur Wyatt.

The Court has been made aware that individual defendants, Ike Allison, Scott Crowder, Horace Lightfoot, and Teddy Liscomb have died since the trial of this cause ended.

The defendants entered into an agreement to withdraw and withhold their trade, and to induce all other members of the black race in Claiborne County to withdraw and withhold their trade from the complainants who are white individuals or corporations owned by white persons. The facts are beyond dispute that the purpose of the agreement was to interfere massively with the businesses of the complainants and other white merchants of Claiborne County. Economic coercion by way of interference was the objective of the defendants. The coercive efforts were designed and calculated to conscript the aid of the white merchants of Claiborne County by way of compelling them to influence, persuade, or force the public officials of Port Gibson and Claiborne County to accede to the demands of the NAACP.

It is beyond dispute that the defendant Map agreed to and did join with the NAACP and certain of the individual defendants in their plan of massive interference with the businesses of the complainants. Thereafter the officers and employees of MAP actively assisted the NAACP in carrying out the scheme of withholding business from all white merchants in Claiborne County.

The evidence shows that no defendant had any direct or primary dispute or controversy with any complainant or other white merchant of Claiborne County, except perhaps certain of defense witnesses who testified that they simply did not like white people in general.

The evidence clearly established that the defendants by their acts interfered with the right of each of the complainants to pursue a lawful business. The evidence also clearly establishes that the *defendants combined to commit*, and certain defendants acting for all, did commit overt acts which were injurious to the trade and business of the complainants; and by such acts the defendants hindered the sale and purchase of commodities in Claiborne County.

The evidence in the record of this action clearly establishes that the defendants engaged in a conspiracy under Mississippi law. Defendants unlawfully conspired to prevent the complainants from exercising their lawful trades and callings and doing other lawful acts by force, threats, and intimidation. The acts of the defendants were injurious to public morals, trade and commerce, because of the use of force and violence. The wrongful act of each of the defendants was the joint acts of all of them in pursuance of the conspiracy.

The uncontradicted evidence in this record establishes that the defendants conducted a secondary boycott against the complainants and other white merchants of Port Gibson and Claiborne County, in violation of Section 97-23-85, Mississippi Code Annotated (MCA), 1972. Defendants contend Section 97-23-85 is unconstitutional under the First and Fourteenth Amendments of the United States Constitution. However, this contention is without merit. Illegal conduct and communication are not protected by constitutional provisions relating to freedom of speech. Under Section 97-23-85 the merchant or other party must have notice of the circumstances giving rise to the grievance so as to be afforded the opportunity of escaping the dire and ruinous effects of a boycott through correcting the cause of the grievance. Section 97-23-85 does not prohibit freedom of speech. The principal objective of the boycott was to force the white merchants of Port Gibson and Claiborne County to bring pressure upon the governing authorities to grant defendants' demands or, in the alternative, to suffer economic ruin; and this Court concludes as a matter of fact and of law that the defendants were carrying out an illegal secondary boycott.

The evidence in this record establishes that the defendants sought to restrain and eliminate all trade between the white merchants in Claiborne County and their black customers, and to direct trade to black stores in the

county or, in the alternative, to merchants out of the county. The combination forged by the defendants unreasonably limited competition between the black merchants and white merchants of the county. The suppression of competition between black and white merchants necessarily restrained trade. Section 75-21-1 et seq., MCA 1972, declares combinations or agreements, the effect of which is to create or attempt to create monopolies or restraints of trade are inimical to the public welfare and are unlawful. The actions of the defendants are within the express prohibitions of the Mississippi statutes. Private persons may sue for damages of every kind resulting from such restraint of trade, and in addition may recover a penalty of $500 in each instance of injury.

The defendant NAACP, a nonresident corporation, was a party to the illegal combination and unlawful boycott. Under Section 11-31-1 through 11-31-11, MCA 1972, the funds of the NAACP in the hands of eleven attachment defendant banks were properly subject to attachment in Chancery. The Court is of the opinion that the sum of $16,831.67 in the hands of the banks are funds belonging to the NAACP, and that the funds were properly and legally attached. The attachment defendants who answered and reported funds are:

Date of Answer	Attachment Defendants	Amount of Funds
11-4-69	First National Bank, Jackson	$ 249.86
11-5-69	The First National Bank of Greenville	182.24
11-10-69	Bank of Cleveland	74.63
11-20-69	Commercial Bank, Woodville	171.48
11-20-69	Southern National Bank, Hattiesburg, Miss. State Youth Conference, NAACP	.33
11-21-69	Port Gibson Bank	247.59
12-8-69	Hancock Bank, Gulfport	151.92

12-5-69	Deposit Guaranty National Bank, Jackson Mechanics Bank of McComb (branch bank)	7,955.03
11-17-69	Merchants & Farmers Bank, Meridian	98.04
11-21-69	Citizens Bank of Hattiesburg	693.82
11-22-69	First National Bank of Clarksdale	6,500.00

Sections 11-31-1 through 11-31-11, MCA 1972 (attachments in Chancery), Sections 75-21-1 through 75-21-39, MCA 1972 (trusts and combines in restraint or hinderance of trade), and Section 97-83-75, MCA 1972 (unlawful restraint of trade—boycott), are all constitutional as written and applied in this case. As a matter of law, the defendants were not entitled to a jury trial in the chancery court. The granting of a jury trial by the chancery court is not a matter of right, but is wholly discretionary with the chancellor. The verdict of a jury in chancery court is purely advisory, and the chancellor may entirely disregard it. Submission of an equity case to a jury is seldom allowed or desired; and even in cases where this is done, the action of the chancellor with reference to a jury and to the issues before the jury cannot be reviewed. Upon appeal the question is whether upon the record the decree is correct irrespective of the jury. No defendant herein was deprived of any legal or constitutional right by reason of the fact that this equity action was heard without a jury.

Seventeen of the complainants proved that they suffered injury to their respective businesses as a direct and proximate result of the unlawful secondary boycott and the defendants' actions in unlawfully restraining trade, which was accomplished by defendants through a conspiracy.

The seventeen complainants proved by evidence clear, concise, and convincing that the defendants; (1) breached

their duties to the complainants, (2) violated complainants' rights, (3) caused injury and damage to the complainants, (4) in the amount of $1,250,699.00. The method used to determine the amount of damages suffered by twelve of the businesses is set out in detail in the record. The remaining complainants presented no evidence as to their business losses. The method employed by the seventeen complainants to establish their damages was the most reasonable basis for computation of their losses, and included the best evidence obtainable under the circumstances of the case. The complainants' evidence as to damages was in no way eroded by the defendants. The Court finds that the expert witnesses, introduced by complainants, properly rested their testimony, with reference to causation in the losses suffered by the twelve businesses, on the fact of the boycott conducted by the defendants against the white merchants of Claiborne County. The boycott and the effect of this economic trauma on the twelve businesses is not challenged by the evidence in the record. Causation is admitted. Defendants claim that the right to boycott and inflict losses on the complainants is a legally protected right afforded to them by the Constitution and laws of the United States. This Court has heretofore determined that the conduct of the defendants was unlawful and unprotected. The evidence establishes that the actions of the defendants was the sole proximate cause of the injuries to the complainant [sic]. The evidence submitted by complainants as to the methods used to compute the amount of damages in this case is of a high degree of certainty. The defendants produced no credible or creditable evidence to contradict the accuracy of those methods, nor did they attempt any computation of their own. The evidence in the record, as testified to by complainants' expert witnesses relating to losses of the twelve businesses, is reasonable and proper.

The Court concluded that only the twelve businesses proving actual damages came within the purview of the

penalty provision in Section 75-21-9, MCA 1972, and that each of the twelve businesses may recover the sum, and only the sum of $500 as a penalty.

The twelve named businesses are entitled as a matter of law to the recovery of actual damages and penalties from the defendants hereinabove named, jointly and severally, in the following amounts:

Complainants	Actual Damages	Penalties	Total
Claiborne Hardware Company, Inc.	$ 14,187	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a McDaniel Pharmacy	165,551	500	166,051
James E. Hudson & George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store	215,197	500	215,697
Waddy Abraham, d/b/a Jitney Jungle	141,717	500	142,217
Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store	34,141	500	34,641
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	153,316	500	153,816
Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria	92,413	500	92,913
Port Gibson Lumber & Supply Company, Inc.	3,350	500	3,850
W. H. Hay, d/b/a O.K. Cleaners and Shirt Laundry	82,580	500	83,080
Charles R. Dobbs, d/b/a Western Auto Associate Store	16,853	500	17,353
Allen Motor Co., Inc.	3,307	500	3,807
Mrs. Edgar A. McCaa, d/b/a Town & Country	22,087	500	22,587
TOTALS	$944,699	$6,000	$950,699

No injuries or damages were proved by the other complainants herein, and they shall take nothing, they being the following: H. B. Hudson, Jr., d/b/a Hudson's Gift Shop; Louis N. Ellis, as Executor of the Will and Estate of Michael Ellis, deceased; Louis N. Ellis, d/b/a Abe's Betty Jean & Port Gibson Trading Company; H. D. Harwell, d/b/a Mack's Package Store; Kelly D. Conn, d/b/a Auto-Lec Associate Store No. 225; A & P Service and Parts, Inc.; Donald Segrest Ford, Inc.; and the intervenor Harold J. Barkley, Jr., as Trustee in Bankruptcy in the matter of Radford S. Jones, d/b/a Jones' Five 'n Ten Store, bankrupt.

The cross-bills filed herein by the NAACP and the individual defendants should be dismissed. Cross complainants wholly failed to meet the burden of proving the allegations set out therein. All of the motions and objections of the parties not heretofore ruled upon are overruled.

Section 97-23-85, MCA 1972, provides that each person defendant shall be liable for attorney fees incurred by the merchant or other person boycotted in cases such as this equity action. The Court finds that the seventeen complainants above named, who sustained injuries by the concerted acts of the defendants, and who are hereinabove found to be due damages in the sums set forth, are entitled to be awarded attorney fees. The Court, having maturely considered the extremely complex nature of this case, the time and effort necessary in trial preparation, the framing of pleadings, the defenses necessary in the federal court proceedings, and the extremely long trial in this Court, is of the opinion that attorney fees in the amount of $300,000 are reasonable and proper.

All costs incurred shall be taxed against the defendants. The actual damages and penalties awarded the seventeen complainants above named, in the sum of $950,699, together with attorney fees in the sum of $300,000, aggre-

gating the sum of $1,250,699, shall be the joint and several liability of the defendants hereinabove named, and said sum shall bear interest at the legal rate from and after the date of rendition of this final decree.

The Court finds that the complainants are entitled to a permanent injunction, enjoining and prohibiting the defendants and all persons confederating with them from:

1. Stationing guards, store watchers, enforcers, deacons, or black hats, or by whatever name such persons are called, at or near the business premises of the complainants.

2. Persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the complainants.

3. Blocking the streets and sidewalks near the business establishments of any complainant or obstructing the entrance to the place of business of any complainant.

4. Using physical violence against any persons; inflicting damage to any real or personal property of any person; or using demeaning and obscene language to or about any person; by reason of such person continuing to patronize or trade with any of the complainants or other persons.

5. Combining or colluding to interfere with the business of another person or for the purpose of restraining or monopolizing trade and commerce.

6. Picketing or patrolling the premises of any complainant for the reason that the Court finds that the picketing is to attain an object which is in violation of the laws and public policy of Mississippi, and has been conducted against and enmeshed in a background of violence.

The funds attached by the writs of attachment in chancery in the hands and under the control of the named resident banks who answered and reported funds are declared to be the funds of the nonresident NAACP. Such funds are to be paid to the twelve complainants and applied toward the payment of damages and penalties due the complainants as determined hereinbefore and in the written opinion. It is therefore,

ORDERED:

A. The defendants, as set forth hereinafter, be and they are jointly and severally liable to the seventeen complainants. The defendants so declared to be jointly and severally liable are:

1. National Association for the Advancement of Colored People
2. Mississippi Action for Progress, Inc.
3. Ferd Allen
4. Henry Anderson
5. Alonzo Atlas
6. Beatrice Atlas
7. Calvin Bailey
8. James Bailey
9. McLawrence Bailey
10. Joseph M. Barber
11. Kenneth C. Barber
12. Bill Beasley
13. Helen Beasley
14. Calvin Blackburn
15. Marjorie W. Brandon
16. Eli Brooks
17. Priscilla Brooks
18. Janie Brown
19. Tullos Brown
20. Eddie Burrell
21. James Burrell
22. Robert Butler, Jr.

23. Arthur Lee Camphor
24. Irma Rae Camphor
25. W. E. Camphor
26. Maggie Clark
27. Alberta Coleman
28. Charles Collier
29. James Collier
30. Alexander Collins
31. Geneva Collins
32. Thelma Crowder
33. Dan Currie (a/k/a Dan Curry)
34. Sarah Jane Currie (a/k/a Curry)
35. Charles Davis
36. Mack Louis Davis
37. Mary Ella Dee
38. James Devoaual
39. Alex Dorsey
40. Sally Dorsey
41. Geneva Durham
42. Johnny Durham
43. Mary Durham
44. John Eggleston
45. Harvey Ellis
46. Jim Ellis, Jr.
47. John Ellis
48. Katie Ellis
49. Rachael Ellis
50. Charles Evers
51. Ethel Graise
52. James Gray
53. Walter L. Griffin, Sr.
54. Bernard Gusta
55. Leesco Gusta (Guster)
56. Charlie Harris
57. Cline Harvey
58. Jim Holt
59. Albert Jackson
60. Willie Jackson

61. Mrs. E. J. Jennings
62. Jesse Johnson
63. Roscoe Johnson
64. Julia Coleman Jones
65. Lela Jones
66. Marcus Jones
67. Nathaniel H. Jones
68. Samuel Jones, Jr.
69. Bobby Kelly
70. Bernice Lee
71. Edward Lee
72. Margaret Liggan (Liggins)
73. Clarence Lucas
74. Julia Lucas
75. Nathaniel Martin
76. Leander Monroe
77. Johnny Moore
78. Mary Lee Moore
79. Willie V. Moore
80. Ellis Neal
81. Bessie Newman
82. D. A. Newman
83. Amos Newsome, Jr.
84. James Odom
85. Leona Owens
86. Roosevelt Owens
87. William Owens
88. Henry Patton, Jr.
89. Henry Otis Preston
90. Evan Roberson
91. Viola Robinson
92. William (Willie) Robinson
93. Mary Ross
94. Odessa Ross
95. William M. Matt Ross
96. Elmo Scott
97. Rudolph Shields
98. Oliver Shinall

99. Dora Shorter
100. Roman Shorter
101. Rosa Shorter
102. Annie B. Smith
103. Bilbo Smith
104. Delores Smith
105. Leon Tarleton
106. Ira Thomas
107. Carl Thompson, Jr.
108. Marguerite Thompson
109. (Rev.) Mack Tisdale
110. George Henry Walker
111. Thelma K. Walker
112. Eddie Walls, Jr.
113. Lessie May Walls
114. Alex Warner
115. Alonzo Warner
116. Ethel Warner
117. Albert Weathers
118. Bome Wells
119. Carl Lee Wells
120. Eddie Lee Wells
121. Katie Wells
122. James Whitney
123. Calvin Williams
124. Ernestine Williams
125. Aaron Wilson
126. Gussie Pearl Wilson
127. (Rev.) Willie Wilson
128. Early Wren
129. Ruby Wren
130. Arthur Wyatt

The seventeen complainants, as set forth hereinafter, be and they are entitled to recover of and from the defendants named in Paragraph A, jointly and severally the actual damages and penalties set forth as follows:

Complainants	Actual Damages	Penalties	Total
Claiborne Hardware Company, Inc.	$ 14,187	$ 500	$ 14,687
Q. H. McDaniel, Jr. d/b/a McDaniel Pharmacy	165,551	500	166,051
James E. Hudson & George Hudson, d/b/a Hudson Bros. Piggly-Wiggly Store	215,197	500	215,697
Waddy Abraham, d/b/a Jitney Jungle	141,717	500	142,217
Joe Ellis, Mrs. Ben Mullen, and Miss Ella Ellis, d/b/a George Ellis Food Store	34,141	500	34,641
Norman N. Ellis & Barbara B. Ellis, d/b/a Ellis Variety Store	153,316	500	153,816
Murad Nasif & Mildred Nasif, d/b/a M & M Superstore Washateria	92,413	500	92,913
Port Gibson Lumber & Supply Company, Inc.	3,350	500	3,850
W. H. Hay, d/b/a O.K. Cleaners and Shirt Laundry	82,580	500	83,080
Charles R. Dobbs, d/b/a Western Auto Associate Store	16,853	500	17,353
Allen Motor Co., Inc.	3,307	500	3,807
Mrs. Edgar A. McCaa, d/b/a Town & Country	22,087	500	22,587
TOTALS	$944,699	$6,000	$950,699

C. The above named complainants be entitled to and they shall recover of and from all of the defendants, jointly and severally, reasonable attorney fees in the sum of $300,000.

D. The above named complainants be entitled to and they shall recover of and from all of the defendants, jointly and severally, the aggregate sum of $1,250,699, plus interest at the legal rate from and after the date of this final decree.

E. The defendants, and each of them, and all person confederating and cooperating with them be and they are hereby permanently enjoined from:

1. Stationing guards, store watchers, enforcers, deacons, or black hats, or by whatever name such persons are called, at or near the business premises of the above named complainants.

2. Persuading, soliciting, advising, threatening, coercing, intimidating and restraining any person to withdraw and withhold his or her patronage or to cease trading with the above named complainants.

3. Blocking the streets and sidewalks near the business establishment of any complainant or obstructing the entrance to the place of business of any of the above named complainants.

4. Using physical violence against any person; inflicting damage to any real or personal property of any person; or using demeaning and obscene language to or about any person; by reason of such person continuing to patronize or trade with any of the above named complainants or other persons.

5. Combining or colluding to interfere with the business of another person or for the purpose of restraining or monopolizing trade and commerce.

6. Picketing or patroling the premises of any of the above named complainants for the reason that the Court finds that the picketing is to attain an object which is in violation of the laws and public policy of Mississippi,

and has been conducted against and enmeshed in a background of violence.

F. The funds attached by the writs of attachment in chancery in the hands of and under the control of the hereinafter named resident banks be and they are hereby declared to be the funds of the nonresident defendant NAACP. Each of the resident attachment defendant banks as set forth hereinafter, be and they are hereby directed to pay to the seventeen above named complainants to be applied toward the payment of damages, the following sums:

Date of Answer	Attachment Defendants	Amount of Funds
11-4-69	First National Bank, Jackson	$ 249.86
11-5-69	The First National Bank of Greenville	182.24
11-10-69	Bank of Cleveland	74.63
11-20-69	Commercial Bank, Woodville	171.48
11-20-69	Southern National Bank, Hattiesburg, Miss. State Youth Conference, NAACP	.33
11-21-69	Port Gibson Bank	247.59
12-8-69	Hancock Bank, Gulfport	151.92
12-5-69	Deposit Guaranty National Bank, Jackson Mechanics Bank of McComb (branch bank)	7,955.03
11-17-69	Merchants & Farmers Bank, Meridian	98.04
11-21-69	Citizens Bank of Hattiesburg	693.82
11-22-69	First National Bank of Clarksdale	6,500.00

G. All costs of this action incurred by the above named complainants be and they are hereby taxed against the defendants.

H. All motions and objections of all parties, not heretofore ruled upon and disposed of, if any, be and they are hereby overruled.

I. For all damages, penalties, attorney fees, and costs assessed against the defendants, jointly and severally, let execution issue.

J. The sheriff of Claiborne County or other lawful officer is hereby directed to serve a copy of the "Final Decree" on each of the defendants.

ORDERED, ADJUDGED, AND DECREED, this the 19th day of August, 1976.

/s/ Geo. Wm. Haynes
Chancellor

APPENDIX H

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Appellants

vs.

CLAIBORNE HARDWARE CO., *et al.*,
Appellees

PETITION FOR REHEARING

Come now Defendant-Appellant NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and all individual Defendant-Appellants herein and petition this Court for a rehearing in this case of the decision and opinion rendered on December 10, 1980, and a reconsideration of the following issue presented by this appeal.

The Court did not expressly rule upon Appellants' Assignment of Error Eight, assigning as error the lower court's enjoining of Appellants' boycott activities. Apparently, this Court believed that Appellants had abandoned their appeal on this point. In fact, Appellants have never abandoned their appeal of the Chancellor's injunction herein.

WHEREFORE, these Appellants pray that this Court will grant a rehearing, will consider the factual issues raised in this petition, will withdraw or modify that

portion of its Opinion and will reverse and remand that portion of the Judgment in this cause enjoining Appellants from engaging in activities protected by the First Amendment.

Respectfully submitted,

National Association for the Advancement of Colored People, et al.

By: /s/ A. Spencer Gilbert III
A. SPENCER GILBERT III
Post Office Box 1267
Jackson, Mississippi 39205
One of the Attorneys for the Appellant NAACP and all Individual Appellants

January 23, 1981

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

No. 51,488

NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, *et al.*,
Appellants

vs.

CLAIBORNE HARDWARE CO., *et al.*,
Appellees

APPELLANTS' BRIEF IN SUPPORT OF PETITION FOR REHEARING

INTRODUCTION

Defendant-Appellant NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE and all remaining individual Defendants-Appellants herein seek rehearing of this Court's apparent affirmance of the permanent injunction issued by the Chancery Court in this action. The Opinion of this Court dated December 10, 1980, does not expressly resolve Appellants' Assignment of Error Eight apparently because of the mistaken conclusion that Appellants had abandoned the point. Appellants did not abandon their Assignment of Error Eight, and therefore respectfully petition the Court to reconsider its treatment of the issues that the Assignment raises.

Posture of the Case on Rehearing

From 1966 to approximately 1972, the businesses of Appellees herein were at least periodically boycotted by black citizens of Claiborne County. In 1969, Appellees brought suit against Appellants herein, alleging that Appellants were responsible for the boycott and seeking damages and an injunction.

From a Decree of the Chancery Court awarding damages to Appellees and enjoining Appellants from engaging in certain activities, an appeal was taken to this Court. Appellants in their assignments of error challenged both the award of damages and the injunction.

The Holding of the Court

The only express reference to Appellants' challenge to the injunction herein is contained in the following paragraph from page 5 of the Opinion:

> (Although the granting of injunction [sic] has been assigned as error, the error has not been argued, and NAACP, et al. say, at the conclusion of their

brief ". . . the injunctive aspects of the case are now moot. . . .").

ARGUMENT

APPELLANTS HAVE NOT ABANDONED THEIR APPEAL OF THE INJUNCTIVE PORTIONS OF THE CHANCELLOR'S DECREE

The quotation from Appellants' opening brief cited at page 5 of the Opinion was taken from a portion of a footnote to the conclusion of that brief. That conclusion reads as follows in its full text:

> "For the reasons stated, the Final Decree appealed from should be reversed and judgment rendered for the Appellants. In the alternative, the Decree should be dissolved and the cause remanded with instructions that it be transferred to the Circuit Court [35] of Claiborne County for a new trial.
>
> ---
>
> "[35] This case should not be retried in equity. It is simply not an equity case. The Mississippi attachment in chancery jurisdictional provisions have been ruled unconstitutional by both federal courts in this State [citations omitted.] Since the action sounds in tort, and the injunctive aspects of the case are now moot, the case if remanded should properly be retried in circuit court as an action at law."

Appellants' footnote 35 was addressed solely to the issue of jurisdiction and venue upon retrial after a reversal of all parts of the Chancellor's Decree, including the injunction. Since the boycott has ended, the injunctive issues clearly would have been moot at such a retrial. Footnote 35 did *not* address the "mootness" of the injunction issued by the Chancellor in this case, but rather was premised upon the dissolution of that injunction.

In fact, the injunctive provisions of the Final Decree of August 19, 1976 remain in effect. Regarding these provisions, Appellants have never abandoned their appeal

but as they made clear in the conclusion to their opening brief, have consistently contended that the Chancellor's Final Decree should be reversed or, in the alternative, dissolved upon remand for a new trial. That Decree included, of course, a "permanent injunction, enjoining and prohibiting the defendants and all persons confederating with them from," *inter alia*, "[p]ersuading, soliciting, [and] advising any person to withdraw and withhold his or her patronage or to cease trading with the complainants." The quoted portion of the Decree, as well as certain of its other specifications, forbids Appellants from engaging in activities which, as we have demonstrated in our briefs, may not be prohibited consistent with the First Amendment. Appellants therefore respectfully petition this Court to rule favorably upon the issue raised by Appellants' Assignment of Error Eight.

Respectfully submitted,

/s/ A. Spencer Gilbert III
A. SPENCER GILBERT III
Post Office Box 1267
Jackson, Mississippi 39205
One of the Attorneys for the
Appellant NAACP and all
Individual Appellants

January 23, 1981